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**The Dissertation Committee for Laurie Marie Wood Certifies that this is the
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**Îles de France: Law and Empire in the
French Atlantic and Indian Oceans, 1680-1780**

Committee:

Julie Hardwick, Co-Supervisor

Robert Olwell, Co-Supervisor

Neil Kamil

Susan Deans-Smith

John Garrigus

**Îles de France: Law and Empire in the
French Atlantic and Indian Oceans, 1680-1780**

by

Laurie Marie Wood, B.A.; M.A.

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Îles de France: Law and Empire in the French Atlantic and Indian Oceans, 1680-1780

Laurie Marie Wood, PhD

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Supervisors: Julie Hardwick and Robert Olwell

Abstract: "Îles de France: Law and Empire in the French Atlantic and Indian Oceans, 1680-1780," explores the global dimensions of France's early modern empire, from "îles" of France like Martinique in the Atlantic and Mauritius (then "Île de France") in the Indian Ocean to the Parisian core known also as "Île de France." This empire was anchored by a legal geography of courts known as conseil supérieurs that were established in metropolitan frontier regions like Alsace and new colonies like Martinique and Île de France. In each of these local jurisdictions, French subjects worked out solutions to problems, like bankruptcy and shipwreck, and resisted political threats, like re-enslavement and banishment. Legal practices like court cases and interjudicial correspondence conducted in imperial institutions, especially the conseils, allowed colonial and metropolitan residents to participate in a global community during an era of rapid change from 1680 to 1780. Conseil records capture ideas and practices about law, society, and culture in the lives of those who participated, willingly or not, in France's overseas empire. I argue that state-building processes like social collaboration and judicial negotiation that have hitherto been considered in European contexts actually occurred on a global scale through the parallel creation and development of courts and

legal tools in Europe and overseas colonies. This study thus contributes new insights to work on political processes, legal regimes, and comparative imperialism.

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Introduction

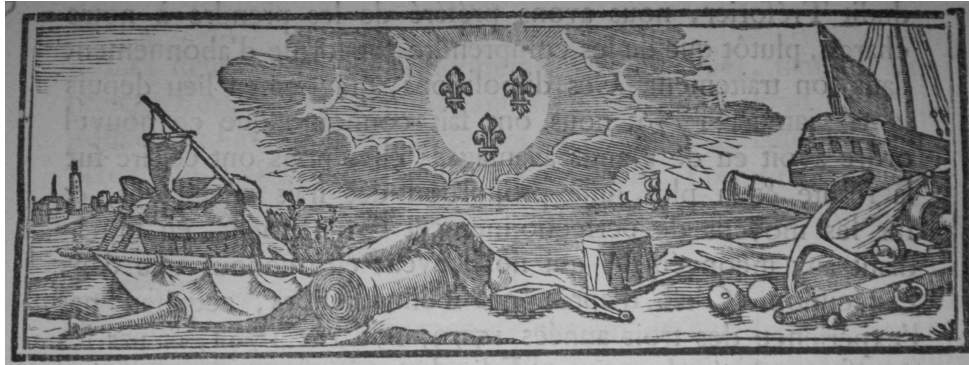


Illustration 1: Édit du Roi, Portant établissement à Versailles, d'un Dépôt des Papiers publics des Colonies. June 1776. F/6/1.

Empires are very hard to visualize. They often impose homogeneity in the form of language and law, but are composed of diverse peoples and encompass mis-matched and contested territories. However, in the eighteenth century in France, an unknown printer imagined the French empire as a sun shining over a nearly waveless ocean that stretched out to the horizon. The sun is emblazoned with three *fleurs-de-lis*, symbols of the Bourbon monarchy, and transparent clouds surround the imperial sun. In the foreground, some of the tools of empire-building lie strewn about the shore: two cannon and some cannonballs, a ship's anchor, sails, a drum and some trumpets, and a banner. To the right of the shore, a ship of the line is moored. Off in the middle distance, two other ships sail. Their proximity to the sun to indicates that they, like the ship closer to land, remain under French guardianship even while separated from French territory. To the left, a town—small in proportion to the ship—sits almost hidden by the jumbled assortment of sails and munitions. However, the town (like the ships) is dwarfed by the sun, which presides over the entire landscape. The vantage point of this image from the shoreline indicates that the onlooker stands in a colonial setting. Rising from far away, the sun exerts a distant, but

inescapable power as the symbol of French authority. The sun, though far in the distance beyond the horizon, defines the entirety of the space described by the drawing, limited by lines as though one were looking through a picture frame out onto the landscape of France's *ancien régime* empire. Encapsulating ideas about imperial power and place, this image was placed above a royal edict issued at Versailles, at the capital and epicenter of France's empire, which created a central repository for documents created in overseas colonies.¹

This image raises several questions about how French subjects experienced and conceived of France and its overseas empire during the *ancien régime*, especially during the long eighteenth century between the reign of Louis the XIV, the “Sun King,” and the dismantling of the *ancien régime* during the French and Haitian Revolutions. First, how did French subjects understand their place within a global empire that for much of the eighteenth century spanned parts of North America, South Asia, Africa, and—most importantly for this study—included islands at the center of the vast Atlantic and Indian Ocean trading systems? How did they move within and among these spaces?

Throughout the period from roughly 1680 to 1780, French subjects did not often distinguish between what modern scholars have labeled the Atlantic and Indian Ocean regions of imperial activity. Though geographic terms like the East and West Indies appeared in the titles of travel narratives, French subjects thought of themselves as participants in a global empire, rather than just an Atlantic or Indian Ocean—or even European—empire. In the late seventeenth century, military men like the captain Jean de

¹ Archives Nationales d’Outre-Mer, Aix-en-Provence, Fonds Ministériels, F/6/1, Édit du Roi, Portant établissement à Versailles, d’un Dépôt des Papiers publics des Colonies. June 1776. Hereafter cited as ANOM FM, followed by the box and folder number. *Ancien régime* refers to France in the period before the revolution beginning in 1789, i.e. before the fall and dissolution of the Bourbon monarchy. This edict created the archive that has since become the Archives Nationales, Section Outre-Mer, now based in Aix-en-Provence, France, whose holdings form the basis of this project.

Lacombe, traveled from their hometowns in France to North America and the East Indies on a series of missions designed to expand and maintain French territories abroad.² By the late eighteenth century more French subjects were full-time colonial residents, like the creole (colony-born)³ jurist Pierre Dessalles, who traveled to metropolitan France for education. He wrote legal treatises to metropolitan and colonial audiences designed to integrate French territories through a common legal culture. Their experiences bring the printer's visualization to life and highlight circuits of travel and exchange within France's *ancien régime* empire, from the "Île de France" region surrounding Paris to its many colonial "îles," including Martinique in the Atlantic and Île de France in the Indian Ocean.

France's early modern state-building efforts comprised a global array of projects in new territories in France and in overseas colonies that in fact formed an imperial legal regime. French subjects rarely called the overseas empire they helped create an "empire," but more frequently used the term *royaume*, or kingdom. This concept implied a corporation of French subjects united under the headship and sovereignty of the monarch that included Martinique and Île de France as much the Île de France region surrounding Paris.⁴ Similarly, colonial residents understood and used the terms "metropole" and

² Jean de Lacombe, sieur de Querçy, *A compendium of the East; being an account of voyages to the Grand Indies made by the Sieur Jean de Lacombe, of Querçy, formerly Captain at arms in the service of the Company of the Indies of Holland*, Trans. and ed., Stephanie and Denis Clark, Introd., Ashley Gibson (London: The Golden Cockerel Press, [1681] 1937). Clark Library.

³ In this study, the term creole denotes white French subjects who were born in the colonies, whether Atlantic or Indian Ocean, rather than people of mixed racial heritage, who are referred to as people of color (a translation of the early modern term, *gen de couleur*).

⁴ In fact, when the term "empire" does appear in early modern documents, it usually has the same connotation of sovereignty and jurisdiction. See for instance, Jean Domat's reference to "the empire [reign] of justice" ("l'empire de la justice") in the opening to his influential legal code. For more on Domat and legal codes, see chapter five. "Épître," Jean Domat, *Les loix civiles dans leur ordre naturel*, 2nd edition (Paris: P. Aubouin, P. Emery et C. Clouzier, 1697), np. <http://gallica.bnf.fr/ark:/12148/bpt6k55297429>, Accessed 4 November 2011.

“colonies” to distinguish different parts of the kingdom, a distinction often emphasized the subordination of the latter to the former, especially in terms of trade.⁵ However, the relationship between metropole and colony was not simply an asymmetrical and bipolar power dynamic between center and periphery. It reflected differences in hierarchy between the king and his subordinate provinces, which included metropolitan provinces like Bretagne and Alsace, as well as colonies like Île de France and Martinique. This kingdom constituted an empire, however, according to modern definitions that emphasize the heterogenous composition of imperial subjects and territories, so this study uses the term empire throughout. French monarchs and administrators sought to create a kingdom from territories in Europe, the Americas, Asia, and Africa through the implementation of a common legal regime centered on law courts known as conseils supérieurs, but it remained an empire as it contained many subjects—especially enslaved Africans—who were never fully integrated into this regime during the eighteenth century.⁶

⁵ E.g. Nobility request for Jean Baptiste Gautier in 1776 from Basse-Terre, Guadeloupe, observing the longstanding relationship between metropole and colonies enjoyed by Martinican merchants, who by the late eighteenth century had enjoyed well over a century of trade with French subjects and foreigners. Archives Nationales d’Outre-Mer, Aix-en-Provence, Fonds Ministériels, Premier Empire Colonial, Personnel Colonial Ancien, Série E. Hereafter cited as ANOM COL E followed by the file number and the person’s name. These have recently been digitized and are available online at <http://anom.archivesnationales.culture.gouv.fr/>. Last accessed 7 March 2013. ANOM COL E 200, Jean Baptiste Gautier. There are actually two different personnel records in this single file: one for Jean Baptiste Gautier, fils (son), who was established in Saint-Domingue and another for Jean Baptiste Gautier who lived in Guadeloupe. I refer to the latter case here.

⁶ According to the authors of a recent comprehensive study of empires, “Empires are large political units, expansionist or with a memory of power extended over space, polities that maintain distinction and hierarchy as they incorporate new people” in contrast to nation states, which are “based on the idea of a single people in a single territory constituting itself as a unique political community. The nation-state proclaims the commonality of its people—even if the reality is more complicated—while the empire-state declares the non-equivalence of multiple populations.” However, France’s *ancien régime* empire both maintained even pre-existing hierarchies from European social categories while incorporating new people, like enslaved Africans, and emphasized the commonality of its people through the duplication of courts and personnel throughout its territories. Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010), 8. For more on the paradoxes of slavery for this legal regime, see especially Sue Peabody, “*There Are No Slaves in France*”: *The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996) and Pierre H. Boulle, *Race et esclavage dans la France de l’Ancien Régime* (Paris: Perrin, 2007).

Second, this image encourages questions about the imperial power itself that emanated from France and was centered on the monarchy at Versailles, symbolized by the sun and *fleurs-de-lis*. The image emphasizes the scope of French sovereignty held in the person of the king and symbolized as the sun. The sun shines over a town full of people and an emptier ocean containing scattered ships that meet at the shoreline, where an assortment of maritime equipment lies on the land. In the image, the sun is the center point for all activity. It appeared at the top of an edict from 1776 that established a central depot for legal papers that were to be gathered at Versailles from around the empire. In the text of the edict, Versailles is the central place to which all subjects—even those who inhabit colonial margins like the image’s seashore—must direct their accounts. What kind of empire, exactly, did French governors and kings establish and what were the terms of this extended sovereignty? More specifically, what kind of legal jurisdiction did that empire exert, especially over new territories in the Atlantic and Indian Oceans that lay under the “sunlight” emanating from Versailles, but were not a contiguous part of France’s European territory?

France’s *ancien régime* empire was anchored by a legal geography of courts that stretched from the center at Versailles to provincial courts in France, like the well-established *parlements*, to newer courts known as *conseils supérieurs*, which were created throughout France and its empire. *Conseils supérieurs* were built along France’s European frontiers, in newer provinces like Alsace and Roussillon, and overseas in new territories in North America, the Caribbean, India, and the Indian Ocean.⁷ French subjects—from investors at Versailles to colonists in Île de France and Martinique—shaped metropolitan and colonial society as they articulated and contested imperial,

Future research will examine questions about slavery in reference to France’s legal geography more comprehensively.

⁷ See Map 1, The *Conseils Supérieurs*.

community, and individual issues in the conseils by using legal tools like court cases, interjudicial correspondence, and legislation. Conseil records thus capture ideas and practices about law, society, and culture in the lives of those who participated, willingly or not, in France's overseas empire during an era of rapid change from 1680 to 1780.

"Îles de France" offers a path-breaking perspective on local and transregional dimensions of the first French empire during an era of growth and rapid change from 1680 to 1780. This era has often been overshadowed by the bookends of early modern debates about state-building (in European scholarship) and eighteenth-century discussions of the French and Haitian Revolutions (in European and colonial historiography). However, this project illuminates both state-building and revolution by uncovering the early modern political and legal processes in France and its empire and that would be modified and/or replaced during the revolutionary era. This research also breaks bilateral analyses of a French center and a colonial periphery by comparing Indian and Atlantic Ocean courts with each other. It uncovers their intercolonial relationships and explains their simultaneous development alongside metropolitan courts as part of a global legal culture.

THE JUDICIAL MAP OF FRANCE'S *ANCIEN RÉGIME* EMPIRE

In metropolitan France and overseas colonies, monarchs and ministers at Versailles sought to build a cohesive kingdom (*royaume*) that would be strong enough to overcome the conflicts that had engulfed France in the religious wars of the sixteenth and early seventeenth centuries. They focused on building regional elites, especially magistrates in the provincial *parlements* and estates, into the kingdom's infrastructure.⁸

⁸ This topic has been the object of many studies. An overview of this literature may be found in William Beik, "The Absolutism of Louis XIV as Social Collaboration." *Past & Present* 188 (2005): 195-224. Crucial studies include William Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (New York: Cambridge University Press, 1985) and J. Russell

However, a critical but less well-known story is how this state-building took place simultaneously on the edges of France's *ancien régime* empire in frontier territories like Alsace and new colonies like Île de France and Martinique. The creation of conseils supérieurs in these new territories allowed royal administrators to continue creating a cohesive kingdom as France's empire expanded by creating a new elite of magistrates and administrators drawn from the military, law courts, and emerging planter and merchant classes rather than by having to collaborate with existing elites who had longstanding regional allegiances.

Conseils in the colonies were created with many of the same personnel and functions as well-respected metropolitan courts like the *parlements*, like the role of *conseiller*, or magistrate. In 1700, Mathurin Guillaume Bruneau was admitted to the Martinique conseil supérieur upon the reception of orders from Versailles that were confirmed by the Martinican intendant (one of the island's chief administrators). The conseil magistrates affirmed the orders from Versailles and admitted him with full privileges as a conseiller "until the king ordered otherwise."⁹ This appointment process matched the method by which magistrates were chosen for metropolitan courts and confirmed that the conseils were viewed as French law courts just like metropolitan courts. This process continued a longstanding pattern in which courts in earlier territorial annexations, like Bretagne, had eventually been integrated into the French state, complete with *parlements* and implied that the colonies, too, were in the process of becoming fully incorporated into France.¹⁰

Major, *From Renaissance Monarchy to Absolute Monarchy: French Kings, Nobles, & Estates* (Baltimore: Johns Hopkins University Press, 1994).

⁹ ANOM COL E 55, Mathurin Guillaume Bruneau.

¹⁰ For an overview of these administrative changes in metropolitan France during the seventeenth century especially with reference to the *parlements* and *généralités*, but without reference to overseas colonies, see

Other patterns of connection pointed to increasing consolidation with the imperial center itself, the Île de France region surrounding Paris that included the most important regional law court, the Paris Parlement. Attorneys in the Paris parlement like Jean André de Ribes and Jean Périnelle-Dumay began to practice in Île de France and Martinique, respectively. Magistrates in the colonies, like Pierre Dessalles, more frequently trained in metropolitan law schools. Some colonial magistrates, like Dessalles, Jacques Petit de Viévigne, and Jean-Baptiste-Étienne Delaleu, also undertook codification projects that paralleled metropolitan models. This showed a growing desire among conseil members to be taken seriously by monarchs and royal ministers, not just as humble petitioners, but as co-legislators.¹¹

Conseils supérieurs were created in new territories during the seventeenth and eighteenth centuries, but especially during the era of Colbertian reforms under Louis XIV toward the end of the seventeenth century.¹² In the 1640s and 1650s, new territories on the European borders of France like Artois and Alsace had been given courts that were initially called *conseils provinciaux* (provincial councils), which were then gradually upgraded to the status of conseils supérieurs with fuller rights to hear cases on appeal. Like the *parlements*, these courts were entrusted with the task of registering new laws, ruling on a wide variety of cases (civil and criminal), and they could also negotiate with the king over royal legislation in a process called remonstration. Conseils were essential

Richard Bonney, *Society and Government in France Under Richelieu and Mazarin, 1624-61* (New York: St. Martin's Press, 1988), especially 79-91.

¹¹ For more on attorneys and magistrates, see chapter two. For more on codification, see chapter five.

¹² However, historians have not looked at the conseils across the world together. James Collins mentions the metropolitan conseils in passing, while for the colonial side James Pritchard has a chart of "Colonial Sovereign Courts by Date of Establishment" but he only includes the American colonies. James B. Collins, *The State in Early Modern France*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 337. James S. Pritchard, *In Search of Empire: The French in the Americas, 1670-1730* (Cambridge: Cambridge University Press, 2004), 247.

structures that undergirded the formation of a French empire with both metropolitan and colonial dimensions during the *ancien régime*. Comparisons of conseils in two parallel colonial economies but in different geopolitical contexts, the Atlantic and Indian Oceans, make clear the hallmarks of this large-scale infrastructure while also showing variations within it.¹³

Conseils formed a global network of courts that with the metropolitan *parlements* constituted the judicial infrastructure of France's imperial state.¹⁴ Conseils were established in the colonies beginning in the 1660s, not as an afterthought to the European conseils, but as part of the same process of territorial and jurisdictional integration accelerated under Louis XIV and Colbert in the 1670s and 1680s that is a classic theme of early modern historiography. Québec's conseil was founded in 1663, only three years after the Roussillon conseil, while Martinique's conseil (formed in 1664) predated the Corsican conseil (1768) by over century. Legal handbooks and compendia like the *Encyclopédie* acknowledged this trend during the *ancien régime*, though they did not analyze the phenomenon in depth. In the mid-1700s, the *Encyclopédie* gave detailed information about the Martinican conseil as well as those in Roussillon and Alsace.¹⁵ In

¹³ I hope to add a comparison to one of the metropolitan conseils in future versions of this project.

¹⁴ In many ways, they resembled the Spanish *audiencias*, which were regional appellate courts established in Spain's Latin American colonies. Like the conseils, they were key conduits between colonial society and metropolitan authorities. They also became similar sites of political debates about colonial identity and autonomy. For more on the *audiencias*, see especially John Lynch, *Spanish Colonial Administration, 1782-1810: The Intendant System in the Viceroyalty of the Río De La Plata* (New York: Greenwood Press, 1969) and Mark A. Burkholder and D. S. Chandler, *From Impotence to Authority: The Spanish Crown and the American Audiencias, 1687-1808* (Columbia: University of Missouri Press, 1977).

¹⁵ Entries for "Conseil supérieur de la Martinique," *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, eds. Denis Diderot and Jean le Rond D'Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed.), <http://encyclopedia.uchicago.edu/>, Vol. 4, 14. "Conseil d'Alsace," Vol 4., 2. "Conseil de Roussillon," Vol. 4, 16. For more on the Martinican entry, see below. It is difficult to know if this meant that the conseils were widely known about in France, especially beyond judicial personnel. The Martinican conseil seems to have had more people aware of it in France than did the other conseils. It, too, was mentioned in the 1778 judicial handbook, *L'État de la France*, alongside brief mentions of the Québec and Saint-Domingue conseils. *L'État de la France: Tome*

the 1770s, Le Moyne des Essarts explained the composition of conseils in the Indian Ocean, Atlantic, and metropolitan France.¹⁶ An assessment of courts in France's overseas colonies reveals the cultivation of imperially-defined, but locally negotiated judicial structures in colonial (and especially urban) environments, elucidating the global and local legal geography of France's early modern empire.¹⁷

Cinquième, De l'établissement des Parlemens, Cours Supérieurs & autres Jurisdictions du Royaume. Des Généralités, Intendances & Recettes Générales (Paris: Chez Ganeau, 1749), 284-5.

¹⁶ See, e.g., the sections on Pondichéry and Île de France, Nicolas-Toussaint Le Moyne des Essarts, *Essai sur l'histoire générale des tribunaux des peuples tant anciens que modernes, ou Dictionnaire historique et judiciaire*, Vol. 3 (Paris : Chez l'Auteur, 1778), 142-3.

¹⁷ In all, there were twelve parlements, three conseils supérieurs, and one conseil provincial in France, compared with thirteen conseils supérieurs in the colonies (though they did not all exist at the same time). Compare Map 2, Metropolitan French Courts with Map 1, The Conseils Supérieurs.

Colony/Province	Date Established
1. Artois	1640
2. Alsace	1657
3. Roussillon	1660
4. Québec ¹⁸	1663
5. Martinique	1664
6. Guadeloupe	1664
7. Madagascar	1669
8. Pondichéry	1671 ¹⁹
9. Saint-Domingue	1685 (Port-au-Prince) ²⁰ 1701 (Cap-Français)
10. Guyane	1701
11. Île Bourbon (Réunion)	1711
12. Île Royale, Canada ²¹	1717
13. Île de France (Mauritius)	1723
14. Louisiana	1723
15. Corsica	1768
16. Grenada	1779

Table 1: List of Conseils Supérieurs by Date of Establishment²²

¹⁸ Also known as the conseil of Canada or New France.

¹⁹ Established in 1671 in Surate, then moved to Pondichéry in 1701.

²⁰ Initially established at Petit Goave, then moved to Léogane and finally Port-au-Prince.

²¹ Also known as the Louisbourg conseil.

²² Some were established as *conseils provinciaux* or *conseils souverains* and then upgraded to *conseils supérieurs* a few years later. However, the composition and authority did not change much with these designations. The dates listed indicate the initial founding of the courts, whether as *conseils provinciaux*, *souverains*, or *supérieurs*.

Conseils brought an important piece of metropolitan infrastructure—courts—out to the contested edges of France’s *ancien régime* empire both within Europe and in the Atlantic and Indian Oceans, creating a legal geography that was anchored by the conseils as judicial entrepôts.²³ Legal geography refers to both the physical and conceptual layout of French colonial governance, with particular attention given to the relationship between governance (as practice) and law (as principles of governance). Though it is nearly synonymous with the term “jurisdiction,” legal geography emphasizes physical space as defined and understood by a range of French subjects, not just the exercise of legal authority over a space guaranteed by territorial agreements and sovereigns.²⁴

The conseils supérieurs are important sites for assessments of France’s legal geography because they were the spaces in which laws were created and articulated *and* the places in which court cases were adjudicated. Conseil records thus act as lenses that reveal the formation of a French empire during the *ancien régime*, including both metropolitan and colonial dimensions.²⁵ Though disparities in the legal evidence that

²³ Compare Map 1, The Conseils Supérieurs with Map 2, French Metropolitan Law Courts. For a more detailed rendering of the conseils as judicial entrepôts between royal and local jurisdictions, see Figure 1 Simplified Chart of Judicial Apparatus in chapter two. In some ways, this configuration was similar to what Mary Sarah Bilder has labeled a “transatlantic constitution” that spanned Britain’s American and European territories, but unlike the British empire, France’s transatlantic regime was global and relied more heavily upon courts. Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).

²⁴ Legal geography is a recognized, though as yet inadequately theorized, field of research among legal scholars that focuses on the relationship between space and legality. Among historians, the term has been most often applied to British North America. Eliga Gould, for example, has used the concept of legal geography to explore the relationship between British law in Europe and the Americas. However, unlike work that emphasizes jurisdiction and sovereignty in terms of territorial claims, this project uses legal geography as an analytical tool that helps describe how court employees and participants acted within and understood a legal regime that had a global, but discontinuous, span. Eliga H. Gould, “Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772,” *The William and Mary Quarterly* 60.3 (July 2003): 471-510. For an earlier expression of a similar idea, see Christopher L. Tomlins, “The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century,” *Law and Social Inquiry* 26.2 (April 2001): 315-72.

²⁵ This approach benefits from models by historians of religious practices, like William Taylor’s study of parish priests and their parishioners as a way to access political and social dynamics in Bourbon Mexico at

survives in French archives can make it difficult to identify long-run patterns in these cases, evidence from a personnel records and conseil registers reveals differences in the legal practices of Atlantic and Indian Ocean courts.

Conseil records show that as French subjects used the conseils to negotiate their own cases, they contributed to state-building processes, whether they lived in metropolitan France or the Atlantic and Indian Ocean colonies. Historians of early modern Europe have analyzed courts as windows onto social and political processes through legal negotiation or “legality.”²⁶ In France, they have focused on a range of jurisdictions, including the *parlements* and *estates*, as mediums through which to understand changing dynamics between local populations and emerging nation-states. However, scholars have not thoroughly dealt with how these processes occurred in newly integrated frontier regions of France like Alsace and Corsica and on the edges of early modern European empires in places like Île de France and Martinique.²⁷ Though much research has looked at early modern state-building in colonial contexts, historians have thus far explained very little about how colonial courts worked and who was involved,

a local levels. William B. Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-century Mexico* (Stanford: Stanford University Press, 1996).

²⁶ Important studies include Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999); Steve Hindle, *The State and Social Change in Early Modern England, c. 1550-1640* (Basingstoke, Hampshire: Macmillan, 2000).

²⁷ On the *parlements*, see especially Beik, *Absolutism and Society*; Bailey Stone, *The French Parlements and the Crisis of the Old Regime* (Chapel Hill: University of North Carolina Press, 1986); John Hurt, *Louis XIV and the Parlements: The Assertion of Royal Authority* (Manchester: Manchester University Press, 2002). For the *estates*, see e.g. Major, *From Renaissance Monarchy to Absolute Monarchy*. Three exceptions to this trend look at jurisdictions besides the *parlements*, like municipal, merchant, and consular courts: Michael P. Breen, *Law, City, and King: Legal Culture, Municipal Politics, and State Formation in Early Modern Dijon* (Rochester, NY: University of Rochester Press, 2007); Amalia D. Kessler, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, CT: Yale University Press, 2007); Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009).

especially in France's *ancien régime* empire. What is known often concerns extraordinary cases, like the slave poisoning and conspiracy case of Mackandal in Saint-Domingue in 1758.²⁸ Colonial laws and court cases are often consulted as sources on colonial phenomena like slavery and smuggling, but they are rarely assessed holistically to include civil cases and quotidian legal issues.²⁹ However, conseils—like metropolitan French courts—were critical precisely because they could deal with many types of cases.

In all of these places, French subjects needed courts to help stabilize and define economic, social, and political relationships like property boundaries, criminality, and status (as noble, free, enslaved, etc.).³⁰ Each conseil supérieur acted as a locus of French legal authority. They each possessed a physical structure (and consistent location) and maintained legal guidelines for action in the form of court registers (known as *greffes*). These features guided litigants and magistrates as they configured colonial society case by case, through the testimony of participants and the deliberations of magistrates during

²⁸ See, e.g. Carolyn E. Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (Knoxville: University of Tennessee Press, 1990), 59-73 and Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012), 174-6. Like many historians, Ghachem focuses on criminal law to explain aspects of slave societies, with much less discussion of civil cases.

²⁹ For slavery, see e.g. Bernard Moitt, *Women and Slavery in the French Antilles, 1635-1848*. Blacks in the Diaspora. Bloomington: Indiana University Press, 2001); Ghachem, *The Old Regime and the Haitian Revolution*; For smuggling and illicit trade see e.g. Kenneth J. Banks, "Official Duplicity: The Illicit Slave Trade of Martinique 1713-1763," in *The Atlantic Economy During the Seventeenth and Eighteenth Centuries: Organization, Operation, Practice, and Personnel*, ed. Peter A. Coclanis (Columbia: University of South Carolina Press, 2005), 229-251. Shannon Lee Dawdy similarly emphasizes illegality, not legality, in her study of conseil supérieur cases in Louisiana. Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans* (Chicago: University of Chicago Press, 2008).

³⁰ Courts served similar purposes within metropolitan France and Europe, though with much more variation in setting and jurisdiction. These included many types of court (e.g. merchant, admiralty, ecclesiastical) many sizes of jurisdiction, from village councils and municipal courts to provincial and royal jurisdictions. In the colonies, the conseils supérieurs (and conseil magistrates) often served in a variety of roles, adjudicating civil, criminal, admiralty, and other kinds of cases.

conseil meetings.³¹ These courts were crucial forums in which French colonial subjects worked out social, economic, and political relationships.³²

SCOPE

This study compares cases drawn from France's tropical colonies in both the Atlantic and Indian Oceans, in the island groups known as the Antilles and Mascarenes, that were administratively and geopolitically central to France's *ancien régime* empire. The Antilles and Mascarenes lay at the heart of two oceanic systems, the Indian and Atlantic Oceans, that formed the main theaters of imperial expansion for European states as they sought new territories and commercial opportunities in the Americas, Africa, and Asia during the early modern period. Maintained by military, commercial, and agricultural activities, these colonies became important sites for legal activity in the conseils, which formed judicial entrepôts as French subjects inhabited and passed through these territories. Antillean and Mascarene conseils also acted as portals through which subjects could access metropolitan forums, especially the imperial center at Versailles in France, via interjudicial correspondence (letters to court officials) and appealed cases.

Martinique and Île de France remained crucial bases for Atlantic and Indian Ocean military operations and busy entrepôts for trade around the Atlantic and Indian

³¹ For more on litigation and court participants, see chapter three.

³² Conseils supérieurs were not the only jurisdictions in early modern colonies, which also had smaller regional and local jurisdictions, as well as admiralty courts to deal with maritime matters. However, all of these other jurisdictions (about which very little is known) reported to the conseils, which reported directly to the ministry of the marine, so conseils can reveal insights about them, too. The secondary literature on early modern French courts is much more developed for the metropole than for the colonies and tends to focus on specific provinces based on regional courts. For lower courts in France, see, Hardwick, *Family Business*; Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, NY: University of Rochester Press, 2008); Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (Rochester, NY: University of Rochester Press, 2008). For French colonial courts in the nineteenth century, see especially John Savage, "Between Colonial Fact and French Law: Slave Poisoners and the Provostial Court in Restoration-Era Martinique," *French Historical Studies* 29.4 (October 1, 2006): 565-594.

Ocean littorals, in contrast to other insular colonies, like the Leeward Islands colonized by the British in the Antilles, which tended to remain isolated and neglected by imperial administrators.³³ They offered central locations from which imperial expeditions could be directed to nearby rival colonies, like the British Antilles including Jamaica, and the American, African, and Asian continents. The Antilles and Mascarenes often attracted more sustained military encampments than larger French colonies like Louisiana, Guyane, and Madagascar, because the former lacked the significant indigenous populations and serpentine coastlines that made the latter colonies difficult to fortify and defend. These islands also contributed to oceanic commerce by producing cash crops like sugar and coffee, while their central locations made them popular trading stations. The Antilles and Mascarenes were enmeshed in France's *ancien régime* empire through these military, commercial and legal ties, despite the fact that they were not physically connected to metropolitan France as were newer provinces like Alsace and Roussillon.

Substantial bodies of legal evidence created in and around the Antillean and Mascarene conseils support this investigation of the Atlantic and Indian Ocean contexts of French state-building and legal culture. They also make it possible to integrate new research about this little-known colonial judicial infrastructure with the considerable body of scholarship that has examined state-building and legal culture in metropolitan contexts. Much more evidence for Martinican conseil hearings has survived than for similar cases in Île de France in two of the primary archival collections for colonial history, but both are heavily skewed to the later eighteenth century.³⁴ Comparisons of

³³ These islands, comprised of Antigua, Montserrat, Nevis, and St. Kitts, are located along the Antillean chain between the Greater Antilles (including Cuba and Hispaniola) and Martinique and Guadeloupe (in the Lesser Antilles). Natalie Zacek, *Settler Society in the English Leeward Islands, 1670-1776* (New York: Cambridge University Press, 2010).

³⁴ Most likely due to several factors: the rise of print culture (though not necessarily a corresponding decline in manuscript culture), the increase in regulation and maintenance of documentation at imperial centers, substantial losses in early modern archival materials in general, and the myriad environmental and

conseils in two parallel colonial economies in different geopolitical contexts, the Atlantic and Indian Oceans, define the hallmarks of this large-scale infrastructure while also showing variations within it. Both the Antilles and Mascarenes were increasingly integrated into France's global legal geography over the course of the eighteenth century, but conseils developed different strategies for maintaining those connections.

Judicial entrepôts in metropolitan France and overseas colonies facilitated feedback loops through which colonial and metropolitan subjects created and shared legal knowledge. These were reinforced by informal networks of exchange like interjudicial correspondence, trading relationships, and kinship networks. France itself was an important part of this global legal geography as the imperial government was based there. Metropolitan courts (in addition to the colonial conseils) were sought out by French subjects as they participated in a choreography of justice that spanned the colonial and metropolitan dimensions of France's *ancien régime* empire and was composed of an array of court users, magistrates, and other officials. However, a substantial proportion of this choreography was performed at the center of the empire, in France. French colonial government was managed by the navy, known as the Ministry of the Marine, which was headquartered at Versailles near Paris.³⁵ Versailles was the seat of both the monarchy and the Ministry of the Marine, which oversaw colonial endeavors directly, and nobles who lived at Versailles invested heavily in the colonies. Versailles was also the home of the

political factors that made colonial documents difficult to preserve (e.g. cases of archival destruction can be traced to hurricanes, volcanic eruptions, revolts, and negligence).

³⁵ In 1710, a Bureau des Colonies was founded under the auspices of the Marine. It is the direct ancestor of the modern Ministère des Outre-Mer that governs France's current overseas territories. For more on Paris as a capital of France's Atlantic (i.e. Caribbean) empire, see Allan Potofsky, "Paris-on-the-Atlantic from the Old Regime to the Revolution" *French History* 25.1 (March 2011): 89-107. Potofsky emphasizes the very specific case of an investor in Saint-Domingue and Paris, which highlights a strong pattern of alliance especially for very large investors that is most noticeable in the last decades of the eighteenth century and especially in the colony of Saint-Domingue. However, the disproportionate attention given to the Paris-Saint-Domingue dynamic by Potofsky and recent French Atlantic scholarship elides the wider context of France's empire, which included both Atlantic and Indian Ocean colonies.

king's personal councils, especially the Conseil d'État that reviewed conseil cases and was the highest level of judicial authority.

In nearby Paris, at the commercial and judicial epicenter of France and its empire, there were at least twenty-two tribunals in the eighteenth century.³⁶ Many of these courts heard appeals from throughout the kingdom, including from the colonies. Above all, the Paris parlement had uncontested status as the largest and most influential law court in the entire French realm. It was there that many colonial attorneys and magistrates were first admitted to the bar and gained legal experience.

Judicial organizations both at Versailles and in Paris were deeply engaged in colonial affairs. Colonial residents like Madame Blot, a Martinican innkeeper, appealed conseil cases to Versailles and Paris. Metropolitan residents like the Paris parlement magistrate Desgranges de Richeteau saw opportunities in the other direction and requested employment in the colonial conseils.³⁷ The Comtesse de Coislin, a noblewoman at Versailles, did not travel to the colonies, but instructed her agents to invest her money in the “treasure” of the Mascarene islands.³⁸ Some, like the Parisian parlement attorney Jean André de Ribes, both sought employment in the colonies (in his case, Île de France) and then later returned to metropolitan France to appeal conseil cases directly to the king and his court at Versailles. As French subjects became more engaged in a global French legal regime, they increasingly participated in both colonial and metropolitan judicial entrepôts.³⁹

³⁶ Richard Mowery Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994), 23.

³⁷ For more on Madame Blot, see chapter three. For more on Desgranges de Richeteau, see chapter two.

³⁸ ANOM COL E 86, de Coislin.

³⁹ See Map 1, The Conseils Supérieurs.

Though the conseils were designed to interface with metropolitan administrators through the king's council at Versailles, French subjects who dealt with the conseils also interacted with provincial courts like the *parlements*. This occurred in two main ways: through parliamentary proceedings and shared personnel.⁴⁰ For example, Bordeaux had the third most important parlement in France and was one of the primary ports for colonial trade, so local elites were often involved in both the parlement and colonial enterprises.⁴¹ These places were points of embarkation for French trading ships and naval fleets, so colonial family enterprises often originated from these ports. Many maintained transoceanic enterprises by stationing family members in colonial and metropolitan ports around the empire. From the colonies, planters often directed their colonial produce to agents stationed at these ports to be distributed to consumers across France and Europe, so parlements like Bordeaux were convenient sites for transregional litigation. This was especially true as the vast majority of judicial activity was composed of civil, not criminal, cases like plantation mortgages, estates, and other property disputes. These cases often involved litigants stationed on both the metropolitan and colonial sides of France's imperial enterprise. Though Amalia Kessler has shown how commercial transactions in France were sometimes negotiated through specific merchant courts, colonial litigation over similar matters was primarily channeled through the conseils and

⁴⁰ A third way was through legal treatises by magistrates. Colonial jurists also loved to cite Bordeaux's most famous political and legal theorist, Montesquieu. For more on these connections, see chapter five's discussion of legal codes generated in the colonies. For an analysis of Montesquieu as an influential source for colonial legal ideas in the Caribbean specifically, see Malick W. Ghachem, "Montesquieu in the Caribbean: The Colonial Enlightenment between Code Noir and Code Civil," *Historical Reflections/Réflexions Historiques* 25.2 (1999): 183-210.

⁴¹ After Paris and Toulouse. For more on Bordeaux as a port city, see Paul Butel, *Vivre à Bordeaux sous l'Ancien Régime* (Paris: Perrin, 1999). For more on Bordeaux as a judicial hub, see Rebecca Kingston, *Montesquieu and the Parlement of Bordeaux* (Geneva: Librairie Droz, 1996).

the *parlements*.⁴² Judicial entrepôts like conseils and parlements in port cities formed convenient forums for judicial matters that pertained to France and its overseas colonies so court subjects often directed interjudicial correspondence and court cases there.

Colonial conseils were also connected to parlements in France because they shared personnel. Many parlement members sought employment in the conseils. The number of conseil supérieur magistrates previously employed by the Bordeaux parlement lagged only behind the number who had worked in the Paris parlement.⁴³ Upon marrying into a large family of Guadeloupean militia officers and planters, the Bordeaux parlement conseiller Jean François Cazaux Du Breuil moved to Guadeloupe to join its conseil, with full rights to “rank, hearing, and deliberative voice” granted by a royal order. These privileges were the same as those he had exercised in Bordeaux. This consistency in judicial roles and overlap in court personnel contributed to the creation of a common legal culture in both metropolitan and colonial contexts.⁴⁴

⁴² It is unclear from current scholarship whether the reform of commercial law that coincided with the expansion of the conseils as part of the Colbertian reforms of the 1670s and 1680s paralleled or diverged from the pattern of conseil development explained in this project. However, new research in merchant courts remains to be done to confirm whether some of colonial commercial litigation was appealed to them or if it is true that these cases went to courts like the parlements. Kessler, *A Revolution in Commerce*.

⁴³ Out of personnel records that identify people by a specific parlement post (for all colonies, regardless of conseil status), at least thirty-five people were employed by the Paris parlement, nine by the Bordeaux parlement, and eight for the Toulouse parlement. The Toulouse parlement was the second-largest parlement in jurisdiction behind Paris, so the higher number for Bordeaux points to a disproportionate influence of Bordelais *parlementaires* in colonial affairs. These numbers are based on personnel record entries, not information within the files, so the full number of parlement members with colonial ties is likely somewhat higher. However, the proportional dominance of Paris over Bordeaux is consistent for other kinds of colonial and legal analysis (except on the issue of trade, for which Le Havre served as the port of call for overseas trade with France), so this spread is unlikely to change with the addition of new records. ANOM COL E. For more on the careers of magistrates who worked in both metropolitan and colonial courts, see chapter two. For more on colonial jurisprudence, see chapter five.

⁴⁴ “rang, sceance [sic] et voix délibérative.” For more on the legal definitions and significance of these terms, see chapter one. ANOM COL E 66, Cazaux Du Breuil, Statement drafted in Guadeloupe 5 April 1727.

The geographical dispersal of the conseils supérieurs makes it possible to analyze the parallel formation of French legal regimes in contexts far removed from France, as well as connections between metropolitan France and its overseas colonies. The scale of these examples allows this study to track the global connections of Atlantic and Indian Ocean colonies to their European metropole and other parts of these systems, but also to maintain a human scale that acknowledges and emphasizes the actions of French subjects.⁴⁵

Martinique and Île de France occupied particularly crucial ground at the center of the Atlantic and Indian Ocean systems, respectively, and they both received very similar attention from French imperial administrators as sites for military bases. Some scholars have suggested that the Indian Ocean islands are equivalent to the Caribbean colonies—especially regarding slavery and plantation agriculture.⁴⁶ However, the geographical isolation of these colonies and their significance as way-stations between France and India made them much more dependent upon military and upper level administrative support (like the intendants) than the more concentrated network of French Caribbean colonies, which developed intercolonial relationships and relied heavily on local family networks to support local judicial units, especially the conseils supérieurs.

Île de France and Île Bourbon, which are known collectively as the Mascarenes, lie in the East Indies, situated at the center of the Indian Ocean. In the West Indies are the

⁴⁵ Compare, for example, Map 4, Caribbean Detail of the Atlantic Region with Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

⁴⁶ E.g. Megan Vaughan, *Creating the Creole Island: Slavery in Eighteenth-Century Mauritius* (Durham: Duke University Press, 2005). Other historians, like Hubert Gerbeau and Richard Allen, have emphasized the distinctiveness of the Indian Ocean, especially in contrast to its better known Atlantic counterpart. Hubert Gerbeau, “L’Océan Indien n’est pas l’Atlantique: la traite illégale à Bourbon au XIX^e siècle,” *Revue Outre-mers, Revue d’histoire* 89 (2002): 79-108; Richard B. Allen, “The Constant Demand of the French: The Mascarene Slave Trade and the Worlds of the Indian Ocean and Atlantic During the Eighteenth and Nineteenth Centuries,” *The Journal of African History* 49.1 (2008): 43-72.

former colonies and present-day overseas departments, Martinique and Guadeloupe, midway along the Antillean chain that separates the Caribbean Sea from the Atlantic.⁴⁷ Unlike the vast territories of the North American interior (like New France and Louisiana) or the smaller slave-trading *comptoirs* of West Africa and India, these colonies were small, focused commercial and imperial ventures. As hubs of agricultural production and as crossroads of imperial conflicts, these colonies attracted huge quantities of financial investment as well as sustained military and administrative attention, which necessitated the establishment and maintenance of the colonial courts that form the core of this study.⁴⁸

⁴⁷ France had a presence on Île Bourbon from at least 1654, but began to make concentrated efforts to settle and cultivate the island under the administration of Mahé de Labourdonnais beginning in 1735. Auguste Toussaint, *Early Printing in the Mascarene Islands, 1767-1810* (Paris: G. Durassié et Cie, 1951), 7. Île Bourbon has remained French since colonization and is now, like Martinique and Guadeloupe, an overseas department of France (known as Réunion). All three were converted from colonies to departments in 1946. Île de France was taken by the British in 1810 and became known as Mauritius. It gained independence in 1968.

⁴⁸ Compare Map 3, The Atlantic Ocean Region with Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

	Atlantic Ocean		Indian Ocean	
	Martinique	Guadeloupe	Île de France	Île Bourbon
Area	436 sq mi	629 sq. mi	788 sq. mi	970 sq mi
Distance to Paris ⁴⁹	6,850 km	6,800 km	9,475 km	9,400 km
Population, 1788⁵⁰	88,870	101,370	44,828	47,195
white	10,603 (12%)	13,865 (14%)	4,457 (10%)	8,182 (17%)
free colored	4,851 (5%)	3,044 (3%)	2,456 (5%)	1,029 (2%)
enslaved	73,416 (83%)	84,461 (83%)	37,915 (85%)	37,984 (81%)
Conseil Established	1664	1664	1734	1711

Table 2: Comparing the Indian and Atlantic Ocean Colonies

The Antilles and Mascarenes were crucial nodes of imperial and regional networks because they lay at the strategic centers of the Atlantic and Indian Oceans, respectively. Travelers to and from the Americas and Asia often stopped at these islands to repair damaged ships and re-provision. Both sets of islands became important producers of cash crops like sugar and coffee. Visitors also stopped at these islands to use the conseils, like the ship captain Querangal, who came with reports of a duel and murder to be tried in the Île de France conseil upon arriving there in his hurricane-battered ship in the 1770s.⁵¹

⁴⁹ By air, not by sea. Compiled, with the exception of Île de France (which is not a part of the EU) from Commission européenne, Direction générale de la politique régionale. *Les Régions Ultrapériphériques: Régions d'Europe, d'atouts et d'opportunités* (Luxembourg: Office des publications de l'Union européenne, 2012). http://ec.europa.eu/regional_policy/sources/docgener/presenta/rup2012/brochure_rup_fr.pdf. Île de France distance estimated based on Île Bourbon information. Because of the necessity of sailing around Africa to reach the Mascarenes, travel times to the Indian Ocean colonies were usually double travel times to the Atlantic colonies (six months versus three months).

⁵⁰ This is the year with the best statistics for each colony and category. These numbers are based on official statistics, so they are almost certainly undercounts. Based on tables in Frédéric Régent, *La France et ses esclaves: de la colonisation aux abolitions, 1620-1848* (Mesnil-sur-l'Estrée: Grasset, 2007), 335-7.

⁵¹ ANOM COL E 77, Louis Georges de Chaux. For this case, see chapter three.

While several islands in the Antillean chain that separates the Atlantic Ocean from the Caribbean Sea belonged to France in the eighteenth century, Martinique had an inordinate influence in the region, especially in terms of judicial and legal developments.⁵² A little less than half the size of Rhode Island, it was claimed as a French possession in 1635 following sporadic trading ventures in the area and populated by an overflow of Saint-Christophe's settlement seven years earlier. Martinique maintained longstanding connections with other colonies in the region: the earliest colonists at Saint-Christophe quickly moved to Martinique, while later Martinicans moved to Saint-Domingue. Martinique shared a parallel history and many connections with Guadeloupe.⁵³ It also maintained close contact with metropolitan France. In the 1710s, for example, planters associated with the conseil participated in a tax revolt that was addressed to the king in the same language that appeared in metropolitan revolts.⁵⁴ Finally, its history has been well-documented from the era of colonization to today, a fact that contrasts with Saint-Domingue's violent exodus from the French Empire and the less-known history of the Mascarenes. The Jesuit Jacques Bouton published an account of Martinique's settlement in 1640 (five years after the colony was officially established)

⁵² See Map 4, Caribbean Detail of the Atlantic Region. By the mid-eighteenth century, the Antilles received less traffic as colonial investors (and hence slave traders, commercial agents, and other travelers) shifted their focus to the more prosperous and quickly growing colony of Saint-Domingue to the northwest. However, they retained a surprising influence in legal circles as even the compiler of a well-known edition of Saint-Dominguan laws, Moreau de Saint-Méry was the scion of an important Martinican creole family. M. L. E. (Médéric Louis Elie) Moreau de Saint-Méry, *Loix et constitutions des colonies française de l'Amérique sous le vent*, 6 volumes. (Paris: Chez l'auteur, 1784-1790).

⁵³ Under the leadership of Pierre Belain d'Esnambuc, who had formerly been in charge of Saint-Christophe, Martinique became part of the Compagnie des Îles d'Amérique. Along with Guadeloupe, it was integrated into the Company of the Western Indies in 1664 and came under royal control in 1674. In 1714, a new government of the Leeward Islands (Îles sous le Vent) was established in Saint-Domingue, so Martinique became the seat of the general government of the Windward Islands (Îles du Vent) that included Guadeloupe, Grenada, and some other islands. Guadeloupe was governed separately from 1763 to 1768 and from 1775 onward.

⁵⁴ For this revolt, known as the Gaoulé, see chapter four.

and the island's planter elite wrote local histories well into the nineteenth century alongside legal treatises and other works.⁵⁵ Martinique's Atlantic context allowed Martinicans to stay much more closely connected to metropolitan politics while their proximity to other imperial territories, like British North America and Spanish Latin America, encouraged them to develop ties with other colonial societies and to develop distinct creole identities.

A few miles north, beyond the intervening island of Dominica, the island of Guadeloupe was colonized in tandem with Martinique. It had been settled at roughly the same time as Martinique in the early seventeenth century and had a conseil supérieur from 1664 like Martinique. Shaped like a butterfly, the two "wings" of the island (separated by a river known as La Rivière Salée) included the more mountainous and volcanic western side known as Basse-Terre and the flatter eastern side known as Grande Terre.⁵⁶ The town of Basse-Terre was located on the southwestern corner of its eponymous region, where it faced the Caribbean side of Antillean sea lanes. In 1775, Guadeloupe became independent from Martinican oversight (as part of the previous Îles du Vent government) with Basse-Terre as the center of government. Basse-Terre dominated Guadeloupe until the 1770s, when Pointe-à-Pitre gradually took precedent as a center for trade, especially as its location at the center of the island's two sides made it a convenient point at which ships could gather agricultural products like sugar from across the island. Like Île Bourbon to Île de France, Guadeloupe had a larger territory than its complement Martinique, but was commercially and politically subordinate to the latter.

⁵⁵ Jacques Bouton, *Relation de l'establissement des François depuis l'an 1635 en l'isle de la Martinique...* (Paris: S. Cramoisy, 1640) Hamilton College Library, Beinecke Rare Books Collection, Clinton, New York; Adrien Dessalles, *Histoire générale des Antilles*, 5 Vols. (Paris: Libraire-Éditeur, 1847-48).

⁵⁶ The eastern side is geologically more like Barbados, which is not the result of volcanic eruptions as are most of the Antilles.

The Mascarene islands, midway between Pondichéry and the Cape of Good Hope, formed France's Asian redoubt: places in which to amass resources and house military regiments.⁵⁷ Alexis Rochon, an astronomer for the Marine and a correspondent of the Parisian Académie des Sciences, called Île de France the "arsenal of our forces and the entrepôt of our commerce," strategically located at the center of the Indian Ocean trading system.⁵⁸ From the islands, French commanders could protect and secure Asian commercial ventures as well as East African slave trading routes. So, like Martinique (and later Saint-Domingue) for the Atlantic, the Mascarenes formed a regional center within France's widely dispersed overseas empire. As French interests in India shrank in response to British dominance, the Mascarenes became centers of colonial trade and defense in their own right, developing a thriving coffee (and later sugar) culture, chosen (as in the Antilles) as luxury products that would win large enough profits to offset the cost of transporting them over large distances. Later, ginger and nutmeg were also cultivated. The islands also acted as critical entrepôts for Indian Ocean shipping, including the carrying trade among various Indian Ocean ports like Pondichéry and Chandernagor.

Though they are typically studied in isolation from other French colonies, the Mascarene islands in the Indian Ocean, comprising Île de France and Île Bourbon, bear a remarkable resemblance to the better-known Antilles.⁵⁹ Unlike metropolitan France,

⁵⁷ For context, see Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

⁵⁸ Alexis Rochon, *Voyage a Madagascar et aux Indes orientales* (Paris: Chez Prault, Imprimeur du Roi, Quai des Augustins, à l'Immortalité, 1791), vi. John Carter Brown Library.

⁵⁹ See Table 1. Richard Allen has pointed out that Mascarene history too often considers these islands in "highly compartmentalized studies" and has called for new work that expands that detailed understanding to examine "the dynamics of social and economic change in plantation colonies in general," a problem that this study addresses by examining Île de France and Île Bourbon alongside Martinique and Guadeloupe. Richard Blair Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius* (Cambridge: Cambridge University Press, 1999), 6. Recent work has situated the Mascarenes more definitively within the frame of East Africa, but the connections between the Mascarenes and South Asia are still unclear,

Martinique in the Atlantic and Île de France in the Indian Ocean had parallel histories as slave societies built on plantation agriculture and as trading entrepôts at the center of important oceanic trading systems. Île de France and Île Bourbon were initially founded as French colonies following the failure and reduction of a previous colony on Madagascar. From 1673, France also maintained a presence in Pondichéry, India, and eventually had at least six different trading posts there. The Dutch occupied Île de France until the French officially took over in 1712, while Île Bourbon became French in 1638, but was transferred to the possession of the Compagnie des Indes in 1664. However, once this organization became bankrupt in 1767, it finally came under royal administration. They then became the objects of new initiatives to cultivate and market spices in an attempt to circumvent and capture the market previously dominated by the spice islands of the eastern Indian Ocean. Île de France tended to dominate Île Bourbon, however, as a trading center in the same way that Martinique dominated Guadeloupe in the Caribbean.

People in the eighteenth century more consciously saw the Mascarenes as strategic gateways to Asia, but the islands were much more isolated in practice than the Antilles. The Mascarenes were too few and too distant from other island chains to form the same kind of dense regional system as the Antilles. Though the Lesser Antilles are spaced at roughly twenty mile intervals, approximately 140 miles lie between Île Bourbon and Île de France. A further 500 miles separate Île Bourbon, the more westerly of the two, from Madagascar. In the long eighteenth century, this meant that the Mascarenes were both more isolated from each other and from mainland territories in Africa and Asia, in addition to the increased isolation imposed by the very long distance

especially for the early modern period. See, e.g. Edward A. Alpers, *East Africa and the Indian Ocean* (Princeton, NJ: Markus Wiener Publishers, 2009). The geographic term Mascarenes also includes the small island of Rodrigues (to the east of Île de France), which is now a dependency of the state of Mauritius. However, this island was rarely populated during the eighteenth century and almost never appears in archival documents from this era.

between France and the Mascarenes. Like Antilleans, Mascarene residents often feared the consequences of this isolation in the face of chronic environmental and military threats like hurricanes and British invasion, but they could not rely on the same kind of regional support offered by nearby colonies in the Antilles.⁶⁰ However, Mascarene Île Bourbon's administrators perceived their island as constantly under threat, a common worry in Caribbean islands, too.⁶¹

However, Île Bourbon's history has paralleled Martinique's for nearly four hundred years, from its founding to its current status as the overseas department La Réunion.⁶² Situated in the Indian Ocean, off the coast of Madagascar and not far from the island of Île de France, Île Bourbon came under French domination in 1638, only three years after Martinique. Like Martinique, it was transferred to a company in 1664, the Compagnie des Indes, and it developed an economy based on sugar and coffee.⁶³ Île Bourbon has not been subjected to nearly the amount of historical scrutiny that Martinique has, despite the existence of excellent records from the eighteenth century.⁶⁴ The difficulties of travel between the island and mainland France made Île Bourbon most popular as a way station for ships traveling from the East Indies toward the Cape of Good

⁶⁰ Besides Île Bourbon, the nearest French base was at Pondichéry, India, over 2,500 miles away.

⁶¹ See, e.g. Poivre's correspondence, Archives Nationales, Paris, AB XIX 2271, dossier 1. Hereafter cited as "AN" followed by the box number. Emilien Petit's second-best known work is a comparison of French, English, and Spanish colonial government as a direct response to the imperial rivalries that characterized Caribbean colonies. Caribbean islands, especially in the Lesser Antilles, switched ownership at a dizzying pace during the seventeenth and eighteenth centuries. Emilien Petit, *Dissertations sur le droit public, des colonies françoises, espagnoles, et angloises, d'après les loix des trois nations, comparees entr'elles ...* (Geneve, 1778).

⁶² The name was changed in 1793 during the French Revolution. For the edict, see ANOM FM F/6/2.

⁶³ Along with Guadeloupe. Île Bourbon was similarly administered concurrently with Île de France. Like Guadeloupe and Martinique, each Mascarene island eventually had its own conseil supérieur. However, unlike Martinique and Guadeloupe it only came under direct royal control in 1767.

⁶⁴ One exception that points to a recent increase in scholarship on this region within the Indian Ocean is Megan Vaughan's study of plantation slavery in Île de France. Vaughan, *Creating the Creole Island*.

Hope and back around Africa to France. Its coffee industry proved vulnerable to more competitive suppliers like Moka and Java, so council-members tried to control its price by negotiating with the Compagnie des Indes.⁶⁵

This isolation was a problem that residents tried to fix through trading relationships. Both Antillean and Mascarene residents maintained strong ties with France as part of similar (though not always overlapping) trading networks. Though Antillean trading families and council-members were most often from Norman and later Bordelais families, Mascarene families were most often tied to French cities like Saint-Mâlo and Lyon that had longstanding reputations for maritime trade and ties to the East Indies via commodities like spices and fabric. Unlike Antilleans, Mascarene residents were often closely connected to other colonies throughout the Indian Ocean, especially in South and East Asia like Pondichéry. François-Bertrand Mahé de La Bourdonnais, an early Mascarene governor, was from a family of Malouin traders and ship-builders who had extensive ties to Pondichéry, while Pierre Poivre, administrator of Île de France and Île Bourbon from 1767 to 1772, was tied most closely to Lyon.⁶⁶ Residents of Île de France occupied an island that was geopolitically important because of its location along trade routes to South and East Asia, so they tended to be more aligned with global trading firms but to be more isolated from other imperial contact.

⁶⁵ ANOM 6DPPC 2708, Extrait des Registres du Greffe du Conseil Supérieur de l'isle de Bourbon. 5 November 1732.

⁶⁶ Of course, the most obvious French port connecting European and Indian Ocean traders and imperial personnel was Lorient, so named after the east ("l'orient") when it was established specifically as the primary French entrepôt for the new Compagnie des Indes in the mid-seventeenth century.

CHRONOLOGY

Though each of these places—France, the Antilles, the Mascarenes—had distinct traits due to their geopolitical and environmental context, they were all a part of the same imperial and legal shifts that occurred over the course of the long eighteenth century between approximately 1680 and 1780. This study focuses on roughly the last century of the French Bourbon monarchy, from the height of Louis XIV's power and the reforms of his minister Colbert in the 1670s and 1680s to the last decade of the *ancien régime*, the 1780s, when a new set of reforms and crises began to create the conditions that would allow the French and Haitian Revolutions to erupt beginning in 1789 and 1791. It charts the development of legal culture during a century in which European imperial and state-building projects developed simultaneously in France and its overseas empire. Though historians of *ancien régime* France have explored judicial culture during this period as a way of understanding the countervailing forces that both united French provinces and challenged absolutist royal claims, these processes have not yet been explained for France's colonial empire even though they were inextricably connected to these metropolitan patterns.

This period was also the era in which French Antillean islands shifted decisively to a sugar economy (following the early example of Barbados) and also the period in which creole families established long-term holdings on these islands. In the Indian Ocean, early commercial ventures gave way to royal control and to an Antillean-style cash crop economy, though these islands continued to remain crucial as points from which to defend and access Asian trading centers. Though these chronologies were somewhat out of sync, with the Mascarenes often following patterns developed first in the Antilles, the end of the Seven Years' War in 1763 prompted a simultaneous retreat to

the Antilles and Mascarenes that included a redeployment of military forces from North America to the Caribbean and southwestern Indian Ocean and a renewal of French economic and political resources in these two regions.

The immediate catalysts for French colonization between roughly 1625 and 1680 were royal geopolitical objectives: first to overcome Spain's monopoly of the Americas and Portuguese dominance in the East Indies, and second to compete with England's simultaneously emerging overseas empire. French and other privateers and pirates had long traversed the Antillean chain in attempts to intercept Spanish galleons trading American bullion, while similar groups roamed the Indian Ocean in search of spices and other East Indian products. These early settlements were limited in terms of population (and were sometimes even seasonal) and governed by individual proprietors who could rule with much autonomy.⁶⁷ However, by 1627, these groups were supplanted by (or in some cases, legitimized as) royal companies with official mandates to produce new products and establish permanent settlements.⁶⁸

Accounts of early colonization emphasize the haphazard and sometimes lawless process by which colonies in both the Atlantic and Indian Ocean were settled.⁶⁹ Both the

⁶⁷ For more on the longstanding presence of French people in the Caribbean before permanent colonies were established, see Jean-Pierre Moreau, *Les Petites Antilles de Christophe Colomb à Richelieu: 1493-1635* (Paris: Karthala, 1992); Philip P. Boucher, *Cannibal Encounters: Europeans and Island Caribs, 1492-1763* (Baltimore: John Hopkins University Press, 1992).

⁶⁸ For a survey of these companies that integrates Atlantic and Indian Ocean contexts, see Philippe Haudrère, *Les Compagnies des Indes orientales: Trois siècles de rencontre entre Orientaux et Occidentaux (1600-1858)* (Paris: Éditions Desjonquères, 2006).

⁶⁹ In fact, scholars have tended to highlight illicit activity as part of a golden age of piracy, sometimes neglecting the fact that new imperial organizations including the conseil were increasingly prompting even pirates to settle down and become part of the imperial framework. One interesting factor to note is that these efforts began first in the Caribbean, which prompted a shift in piracy from the Atlantic to the Indian Ocean at the end of the seventeenth century. Piracy in the Mascarenes and Madagascar was thus very closely connected to piracy in the Antilles. For an account of piracy that analyzes both regions and discusses its relative inefficiencies (especially in contrast to legal, state sanctioned trade), see Anne Pérotin-Dumon, "The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850," in *The Political Economy of Merchant Empires*, James D. Tracy, ed., (Cambridge: Cambridge University Press, 1991), 196-227.

Mascarenes and Antilles lacked substantial indigenous populations, but even the French citizens who were sent to settle these islands were considered too rough to be controlled by law codes.⁷⁰ Colonial founders tended to be adventurers and outsiders like Guillaume Coppier, a Lyonnais indentured servant and Pitre Paul, a Flemish transient shipworker and occasional pirate: men who had acquired the approval of the French monarchy through military service or by joining independent ventures rather than as magistrates or administrators.⁷¹ However, in the midst of these fluctuations and even during the so-called golden age of piracy, new courts called *conseils supérieurs* were established in the colonies as well as in new regions in France as French administrators, especially Colbert, sought to standardize governance and make new territories part of a seamless infrastructure that stretched from metropolitan France to the outermost territories of the Atlantic and Indian Oceans.

Residents of the Antilles and Mascarenes were part of small but volatile colonial communities that were subject to local catastrophes as well as the objects of global geopolitical calculations by competing European empires. Most residents of these colonies lived in rural areas, where they managed or worked on plantations, but sizeable urban populations did also develop as points of exchange for planters and traders. The Antilles and Mascarenes were both slave societies, in which enslaved people outnumbered a tiny white elite by the early decades of the eighteenth century.⁷² Most of

⁷⁰ See, e.g., Guillaume Coppier's pessimistic account of early colonial settlement in the Antilles. Guillaume Coppier, *Histoire et voyage des Indes occidentales, et de plusieurs autres regions maritimes, & esloignées. Divisé en deux livres* (Lyon: Pour Jean Huguetan, rue Merciere, au Plat d'Estain, 1645), Marcel Chatillon Collection, Bibliothèque Mazarine, Paris.

⁷¹ Both men traveled in the Atlantic and Indian Ocean regions, respectively, at moments when those regions were first being developed as colonies. Coppier traveled in the Antilles in the mid-seventeenth century, Paul in the early eighteenth century. For more on Coppier, see the conclusion. For more on Pitre, see chapter three. Coppier, *Histoire et voyage*. ANOM COL E 337, Pitre Paul.

⁷² For an introduction to the Mascarene slave trade (and the historiography of slavery in this region), see Allen, "The Constant Demand of the French." Together, Île de France and Île Bourbon were home to over

the cases heard by the conseils dealt with this tiny white elite, who shared a common investment in the legally-binding decisions issued by the conseils.⁷³

French imperialism around the world was an evolving project during the long eighteenth century. New territories continued to be added in places like the Mediterranean (Corsica was added in 1768), the Americas (Saint-Domingue was officially annexed in 1697), and the Indian Ocean (with several failed attempts to colonize Madagascar). Older possessions in North America and South Asia were lost during the middle decades of the eighteenth century during conflicts that culminated with the Seven Years' War. These losses prompted a reassessment of the strategic value of colonies and a redeployment of imperial resources, of which military forces comprised a large proportion. The Antilles and Mascarenes remained strategic priorities both before and after this mid-century shift, occupying crucial places at the center of Atlantic and Indian Ocean geopolitical calculations as well as providing valuable agricultural production of cash crops like sugar and coffee. Conseils were reinvigorated following these conflicts in places like the Antilles and Mascarenes, where French military operations had retreated and where colonial investors and administrators both sought to reinvest their remaining resources to try to reinvigorate the smaller, but still globally scattered territories within France's empire.⁷⁴

71,000 slaves by 1787. Ibid., 52. By comparison, Martinique had approximately 76,000 slaves and Guadeloupe had 90,000 slaves in 1780. Lucien Pierre Peytraud, *Esclavage aux Antilles Françaises Avant 1789* (Cambridge, UK: Cambridge University Press, [1897] 2010), 139.

⁷³ While the *Code Noir* (applied to the Antilles in 1685 and the Mascarenes in 1723) theoretically guided colonial magistrates toward a consistent and humane treatment of slaves, colonial legal practices demonstrated more complicated realities. For example, while legally defined as chattel, enslaved people were often subject to criminal prosecution and sometimes called in as witnesses. For more on the *Code Noir*, see chapter five.

⁷⁴ This included the redeployment of military personnel from North America and South Asia to the Antilles and Mascarenes, along with new settlement initiatives. For the latter, see e.g. Christopher Hodson, "'A Bondage So Harsh': Acadian Labor in the French Caribbean, 1763–1766," *Early American Studies: An Interdisciplinary Journal* 5.1 (2007): 95-131.

This trend allowed a new generation of colonial lobbyists and both colonial and metropolitan-based legal experts to argue for expanded positions as conseil magistrates and legal commentators that increasingly relied upon legal arguments developed in and alongside the metropolitan *parlements*. Colonial courts were thus bound up in the same kinds of political debates about the nature of the *ancien régime* monarchy and invested in similar arguments for regional autonomy and judicial transparency as the more familiar metropolitan cases that led to the French Revolution.⁷⁵

At the end of this period, the development of a somewhat homogeneous legal regime across France and these overseas possessions meant that Antillean and Mascarene residents took part in the same political and judicial debates that began to rip the *ancien régime* apart in the decade leading up to the French and Haitian Revolutions.⁷⁶ This chronological intervention proves that the period between roughly 1680 and 1780 is significant on its own, not only because of how its explanatory utility for both the earlier period of exploration and colonization and the later period characterized by revolution and decolonization.

⁷⁵ For judicial culture and critiques of the *ancien régime* in France during this era, see e.g. Sarah C. Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993); David Avrom Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York: Oxford University Press, 1994); Julian Swann, *Politics and the Parlement of Paris under Louis XV, 1754-1774* (New York: Cambridge University Press, 1995).

⁷⁶ For example, French colonies submitted *cahiers de doléances* to the metropole and sent representatives to the Estates General meeting in Paris from 1789. The latter were frequently legal experts among those discussed in this study. Though most *parlements* and conseils supérieurs did not survive the revolution, the Martinican conseil lasted until 1808, when it was replaced by a *cour d'appel* (court of appeals). Saint-Domingue's conseils were dissolved in January 1787, the Paris and Bordeaux *parlements* were exiled that August, and most *parlements* and conseils were (after being reseated for a time) dissolved in 1790. Paul Butel, *Histoire des Antilles françaises: XVIIe-XXe siècle* (Paris: Perrin, 2002), 350. For a comprehensive survey of judicial changes during the revolution in France, including the *parlements* and the provincial, but not colonial, conseils supérieurs, see Jacqueline Lucienne Lafon, *La Révolution française face au système judiciaire d'Ancien Régime* (Geneva: Droz, 2001). These questions have been neglected for colonial courts, though some scholarship has examined legal changes through the lens of the colonial assemblies that were established during the revolution, e.g. in Miranda Frances Spieler, "The Legal Structure of Colonial Rule during the French Revolution," *William and Mary Quarterly*, 66.2 (April 2009): 365-408.

This project ends in roughly 1780, a decade before the dissolution of the *ancien régime*. This period coincided with the publication of several major colonial legal commentaries at a moment in which judicial debates that had grown out of the colonial conseils and metropolitan courts began to reach a critical mass in the years before the French and Haitian Revolutions began in the late 1780s and early 1790s. This endpoint allows for a holistic examination of 1680 to 1780 as an era in which a range of French subjects created the *ancien régime* imperial order, without foreshadowing its end. This chronological focus speaks to the growing literature on the French and Haitian Revolutions by elucidating the assumptions and practices that undergirded the legal regime that would become a particular object of reform during the revolutions. It consciously moderates the disproportionate attention that has been devoted to Saint-Domingue and the Haitian Revolution by addressing the global colonial context of the pre-revolutionary era, in which sugar colonies from the Indian Ocean to the Atlantic were part of a cohesive though disparate imperial and commercial enterprise.⁷⁷

Within these long-term trends, comparisons between the Antillean and Mascarene conseils reveal local idiosyncrasies in that illustrate broader Atlantic and Indian Ocean dynamics. Patterns of judicial negotiation stabilized in Martinique early on as the population itself became more creolized and a planter elite quickly emerged in the late seventeenth century. Martinique was colonized early in the seventeenth century and had a conseil starting in 1664. Magistrates there collected much more information and the records are denser for the seventeenth and eighteenth centuries. By the beginning of the

⁷⁷ These dense, but rapidly growing literatures have made great strides to connect Antillean and European histories, but they do not often address the period before 1780 or the Indian Ocean sphere of colonization. For helpful introductions to revolutionary scholarship on both sides of the Atlantic, see e.g. Donald Sutherland, *The French Revolution and Empire: The Quest for a Civic Order* (Malden, MA: Blackwell, 2003) and Jeremy D. Popkin, *You Are All Free: The Haitian Revolution and the Abolition of Slavery* (Cambridge: Cambridge University Press, 2010).

eighteenth century, judicial practices were well-established in the island and the consolidation of a creole elite who ran the conseil meant that these patterns could be shared and passed down generationally within a relatively small set of magistrates. Family members of early conseillers, like Antoine Cornette who served on the Martinique conseil in the 1670s, appear repeatedly in conseil records and as magistrates throughout the eighteenth century.⁷⁸ Likewise, the creolization of the island's population during the late seventeenth and early eighteenth centuries meant that the wider population was becoming less fluid and could similarly pass along legal knowledge to neighbors and kin who were increasingly less likely to leave the island.⁷⁹

The Mascarene pattern proceeded at a later and slower pace than in Martinique. Though the French had informally settled the Mascarenes from the late seventeenth century, legal records for the colonies only begin in the second decade of the eighteenth century, around the time that the Mascarene conseils were established.⁸⁰ Île Bourbon's conseil was created in 1711 as a provincial council and then became a superior council (with greater powers) in 1724.⁸¹ The Île de France conseil was established in the 1720s under the Île Bourbon council, but became the dominant conseil by 1767 with the

⁷⁸ ANOM COL E 91, Antoine Cornette. His descendant, Cornette de Saint-Cyr de Cély, appears with Jean Assier, another conseiller, in records from the 1760s and 1770s. ANOM COL E 91, Cornette de Saint-Cyr de Cély, et Jean Assier.

⁷⁹ Even the slave population was creolizing, in contrast to Saint-Domingue especially (whose volume of slave imports increased dramatically up to the point of revolution in 1791).

⁸⁰ One law included in the Moreau de Saint-Méry collection dated from 1556, regarding the declaration of pregnancies out of wedlock, but the majority of the collection begins in 1726. Archives Nationales d'Outre-Mer, Aix-en-Provence, Fonds Ministériels, Premier Empire Colonial, Documents Divers, Collection Moreau de Saint-Méry, Série F3. Hereafter cited as ANOM COL F/3 followed by the volume number. ANOM FM F/3/210 Île de France.

⁸¹ Delabarre de Nanteuil. *Législation de l'île de la Réunion: répertoire raisonne des lois, ordonnances royales, etc.*, Vol. 1 (Paris: [s.n.], 1861-1863). Online at nrs.harvard.edu/urn-3:HUL.FIG:001661640. Accessed 16 August 2012.

establishment of royal control of the islands.⁸² While the Martinican conseil had coalesced by the end of the seventeenth century around a creole elite that was invested in using the conseil to maintain order on the island and liaise with metropolitan authorities, the Mascarene conseils were much less organized and consistent. In 1729, a letter from the directors of the Compagnie des Indes at Paris to the Île de France government chastised the islanders for lacking discipline and suspended the conseil for “total inaction” and “dreadful chaos” until it could re-established and that all the royal ordinances be followed.⁸³ This later timing and disorganization also meant that judicial processes were slower to become standardized in the Mascarenes than in the Antilles.

A few other factors also contributed to this trend. First, the Mascarenes were strategic military and trading bases well into the late eighteenth century, so colonial residents there had a much stronger tendency to demand French imperial attention than Martinicans, who had developed their own home-grown brand of legal negotiation that was self-consciously autonomous. Second, the isolation and smaller population of the Mascarenes meant that colonial residents did develop their own kind of legal process, but they were under less pressure to create standardized practices than in Martinique, where a busy traffic from within the island and dependencies like Guadeloupe and Saint Lucia encouraged a regional homogenization of legal practices. This distinction shows that legal practices throughout France’s *ancien régime* empire developed over time as new provinces and colonies became gradually more accustomed and familiar with French

⁸² However, in 1726, the conseil provincial was modified to include a royal lieutenant (to take the place of Sr. Dioré if absent), a second conseiller (Sr. de Saint-Martin, *teneur de livres* and *garde magasin general*), third conseiller (Sr. Dugard d'Auterive, major). The conseil was allowed to choose up to seven people to fill out the remainder, a rare allowance by metropolitan administrators who nearly always nominated conseillers (e.g. contrast this with the Bruneau nomination explained above). ANOM FM F/3/210 Île de France, 29. Ruling from 31 May 1726.

⁸³ ANOM FM F/3/210 Île de France, 61-63.

legal culture. An exploration of legal practices through metropolitan France, the Atlantic and Indian Oceans shows how local factors, like geographic isolation and creolizing populations, inhibited or encouraged the emergence of a common legal culture during the long eighteenth century.

INTERVENTION

This project focuses on the conseils supérieurs to plot colonial and metropolitan state-building and legal practices simultaneously across the long eighteenth century. The claims of this project speak to several major historiographical debates and reframe European, Atlantic, and Indian Ocean histories via a comparative and synthetic study of France's overseas colonies in the early modern period. First, it expands the prevailing Atlantic paradigm by showing that French colonial residents and investors navigated a global imperial and legal community that encompassed the Atlantic, the Indian Ocean, and Europe, through legal resources that they accessed via the conseils.⁸⁴ French colonial subjects understood themselves as members of a global kingdom, focusing on case studies from Martinique (in the Caribbean) and Île de France (in the western Indian Ocean). Some, like the jurist François Millon, had lives that spanned both the Atlantic

⁸⁴ A good survey of Atlantic historiography can be found in Jack P. Greene and Philip D. Morgan, eds., *Atlantic History: A Critical Appraisal* (New York: Oxford University Press, 2009). This literature rightly recognizes the significance of transatlantic relationships, but it tends to neglect the degree to which people understood themselves to be participating in imperial and global, not Atlantic, processes. Likewise, Indian Ocean historiography (though an older field than Atlantic history) is often ignored or kept separate from Atlantic work, despite the fact that early modern actors often traversed both oceanic systems. The Indian Ocean has long been recognized as a cohesive zone of trade and cultural exchange, but Indian Ocean studies have recently been reinvigorated as part of the "new thalassology" that has applied and expanded Braudelien concepts of oceans as unifying areas to the Atlantic and Pacific as well. For recent surveys of the field, see Markus P. M. Vink, "Indian Ocean Studies and the 'New Thalassology,'" *Journal of Global History* 2.1 (2007): 41-62 and Sebastian R. Prange, "Scholars and the Sea: A Historiography of the Indian Ocean," *History Compass* 6.5 (2008): 1382-1393. Important studies of the Indian Ocean include Alan Villiers, *The Indian Ocean* (London: Museum Press, 1952); K.N. Chaudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge, UK: Cambridge University Press, 1985); Ashin Das Gupta and M. N. Pearson, eds., *India and the Indian Ocean 1500-1800* (Calcutta: Oxford University Press, 1987); Sugata Bose, *A Hundred Horizons: The Indian Ocean in the Age of Global Empire* (Cambridge: Harvard University Press, 2006).

and Indian Oceans. Both colonies had similar imperial significance as islands located at the center of important oceanic trading systems and both had similar environmental and social characteristics as tropical slave societies. Conseils supérieurs are ideal sites for comparing imperial practices because they were established simultaneously in the new French territories of Alsace and Roussillon, as well as colonies in North America, the Caribbean, West Africa, India, and the Indian Ocean. The conseils reveal French state-building as a global, rather than European, phenomenon that depended upon local actors like conseil magistrates and court users.

Scholars have struggled to define colonial spaces as national or imperial, constrained by continental boundaries or united by oceanic spaces. These physical irregularities were likewise layered with populations that were sometimes stable or migratory, homogeneous or diverse. Early studies highlighted the plantation as the archetypal colonial institution in which enslaved people and overseers all worked as part of an economic complex that drove colonial expansion.⁸⁵ Work by scholars like Anne Pérotin-Dumon and Alejandro de la Fuente, however, has pointed out that colonial cities acted as critical terminuses between these rural areas and maritime trade routes, forming the bonds that held Atlantic and Indian Ocean networks together.⁸⁶ Recent scholarship in

⁸⁵ See, for example, the classic plantation studies of Gabriel Debien, including *Une plantation de Saint-Domingue. La sucrerie Galbaud du Fort (1690-1802)* (Cairo: Les Presses de l'Institut français d'archéologie orientale du Caire, 1941).

⁸⁶ Pérotin-Dumon's study is part of a tradition of colonial scholarship in the Antilles that emphasizes the urban entrepôts that connected different parts of the early modern Atlantic world against earlier work (e.g. by Gabriel Debien cited above) that had emphasized the rural agricultural character of colonial colonies. Anne Pérotin-Dumon, *La ville aux Iles, la ville dans l'île: Basse-Terre et Pointe-à-Pitre Guadeloupe, 1650-1820, 1650-1820* (Paris: Karthala, 2000); Alejandro de la Fuente, *Havana and the Atlantic in the Sixteenth Century* (Chapel Hill: University of North Carolina Press, 2008). See also John Robert McNeill, *Atlantic Empires of France and Spain: Louisbourg and Havana, 1700-1763* (Chapel Hill: University of North Carolina Press, 1985). For Francophone scholarship, this newer Antillean focus complements a well-established literature on the French port cities with which colonies conducted commerce. E.g. Gaston Martin, *L'Ère des négriers (1714-1774): Nantes au XVIIIe siècle* (Paris: Karthala, 1993); Paul Butel, *Vivre à Bordeaux*.

colonial history has moved even further away from institutions and local histories to recount the history of transit and connections over distance, emphasizing themes like migration and travel. This work has charted the surprising mobility of early modern people and the depth to which ideas (like Enlightenment philosophies) influenced communities far beyond the European imperial capitals.⁸⁷

However, a formulation of France's *ancien régime* empire defined as a network of judicial entrepôts offers a way to make sense of the ways in which colonial empires accommodated these paradoxical traits and contained—to varying degrees—these changing populations. Legal regimes that were laid out as networks of judicial entrepôts offered subjects familiar settings in which to work out issues in specific local contexts, whether the family-driven politics of Martinique or the more imperially and commercially defined environment of Île de France. Yet these judicial entrepôts also provided the links court participants and magistrates needed in order to access metropolitan audiences of ministers and courts of appeal. Conseils illuminate rural and urban dynamics as well as the patterns of migration that connected them because they were located in colonial cities and dealt with both rural and urban colonial areas that lay under their jurisdiction. As analytical objects, they form sites from which to observe a

⁸⁷ Important work for French Atlantic history that focuses on these themes includes J. F. Bosher, *The Canada Merchants, 1713-1763* (Oxford: Clarendon Press, 1987); Robert Louis Stein, *The French Sugar Business in the Eighteenth Century* (Baton Rouge: Louisiana State University Press, 1988). More recent work has expanded beyond the Atlantic to include global trajectories of individual people, like Jeanne Baret, who accompanied Bougainville's expedition to circumnavigate the globe. Glynis Ridley, *The Discovery of Jeanne Baret: A Story of Science, the High Seas, and the First Woman to Circumnavigate the Globe* (New York: Crown Publishers, 2010). Interesting new work has also emphasized the influence on colonial events (especially the Haitian Revolution) on other parts of the Atlantic region. For a historical introduction to these themes, see David P. Geggus, ed., *The Impact of the Haitian Revolution in the Atlantic World* (Columbia, S.C.: University of South Carolina, 2001). For a more literary analysis, Doris L. Garraway, ed., *Tree of Liberty: Cultural Legacies of the Haitian Revolution in the Atlantic World* (Charlottesville: University of Virginia Press, 2008). For the impact of the Haitian Revolution on the United States, see Ashli White, *Encountering Revolution: Haiti and the Making of the Early Republic* (Baltimore: Johns Hopkins University Press, 2010).

range of colonial processes and actors from a single vantage point. As conseil magistrates, employees, and participants entered the *palais de justice* and entered their statements into the colonial registers (*greffes*), they left accounts of their actions and beliefs to an institution that had parallels across the disparate parts of France's *ancien régime* empire.

Second, this project contends that comparative legal history reveals the transregional but imperially and locally specific contours of colonization. Although a rich historiography of negotiation, or “legality,” exists for British North America and colonial Latin America, little is yet known about the French American case.⁸⁸ France simultaneously established legal regimes in across the globe, but with a distinct strategy of royal control rather than decentralization. As in Spain, French jurists relied upon a civil law tradition that they refined through codification projects, but they did not have to incorporate large indigenous populations and customs as found in Latin America.

Few studies explain this institutional side of empire and no one has examined the *conseils supérieurs* in global context, despite recent work that emphasizes colonial resistance to imperial legal regimes.⁸⁹ Lauren Benton has united these imperial histories by pointing out that European empires often borrowed legal ideas from each other and

⁸⁸ For British North America, see especially Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America*. (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2001). For colonial Latin America see, e.g., Bianca Premo, *Children of the Father King: Youth, Authority, & Legal Minority in Colonial Lima* (Chapel Hill: University of North Carolina Press, 2005); Brian Philip Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).

⁸⁹ To my knowledge, the only systematic study of the *conseils supérieurs* is Henri Joucla, *Le Conseil Supérieur des Colonies et ses Antécédents, avec de Nombreux Documents Inédits et Notamment les Procès-Verbaux du Comité Colonial de l'Assemblée Constituante* (Paris: Les Editions du monde moderne, 1927). For the Alsatian conseil, see François Burckard, *Le conseil souverain d'Alsace au XVIIIe siècle, représentant du roi et défenseur de la province* (Strasbourg: Société savante d'Alsace, 1995).

adjudicated laws using a range of sources in a phenomenon she calls “legal pluralism.”⁹⁰ However, this scholarship overestimates the hybridization of colonial legal regimes by privileging borderlands and frontier zones where European sovereignty was professed rather than proven. In the areas of intensive agricultural production and colonial trade where European empires focused their personnel and financial investment, like the Atlantic and Indian Ocean islands, colonial residents and investors sought dispute resolution from specific imperial legal traditions, especially through courts like the *conseils*.

Comparative research has only recently included the Indian Ocean islands in analyses of the better-documented Atlantic colonies, most often on the topic of slavery, but has rarely explored the common judicial culture that united French territories around the globe.⁹¹ Scholars who have focused on the Indian Ocean, like Hubert Gerbeau and Richard Allen, have often felt the need to argue forcefully against the influence of the dominant Atlantic model of transoceanic and colonial interaction.⁹² However, as Gerbeau, Allen, and others have shown, Indian Ocean colonies had remarkable similarities to those of the Atlantic in terms of agricultural products, labor systems, and patterns of slave trading. Megan Vaughan’s recent study of slavery and the Île de France has likewise investigated a classic Atlantic theme—creolization—in the newer field of Indian Ocean studies.⁹³ These studies have usefully brought Atlantic and Indian Ocean cases into

⁹⁰ Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge, UK: Cambridge University Press, 2002) and *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, UK: Cambridge University Press, 2010).

⁹¹ In general, French scholarship has been much more aware of both Atlantic and Indian Ocean examples, in large part because Martinique, Guadeloupe, and Réunion (Île Bourbon) constitute overseas departments of France today. Frédéric Régent’s survey of French slavery, for example, synthesizes both regions throughout: *La France et ses esclaves*.

⁹² Gerbeau sets up the illegal slave trade in Île Bourbon as a lesser-known foil to Atlantic slavery in his “L’Océan Indien n’est pas l’Atlantique”; Allen, “The Constant Demand of the French.”

⁹³ Vaughan, *Creating the Creole Island*.

dialogue, but they have yet to compare evidence from both places or to account for the similarities in imperial political construction of these colonies. These insular microstudies also underplay the degree to which both Antilleans and Mascarene residents relied upon the same metropolitan center in Paris as an access point for legal recourse. The conseils offer a lens through which to observe these processes simultaneously in Atlantic and Indian Ocean settings, incorporating France with its colonies.

Third, this work shifts the course of inquiry for French metropolitan and colonial historiography. It portrays France's early modern empire as a work in progress, not a doomed project, and emphasizes the contingency of the entire enterprise rather than its weakness at a few critical moments. The French imperial subjects who participated as litigants, witnesses, and magistrates constituted and sustained a coherent, though contested, institutional framework that was centered on the conseils. Though scholars of early modern France have emphasized the ways that information-gathering and reforms driven from the center at Paris contributed to the creation of a unified French state during the seventeenth and eighteenth centuries, they have not acknowledged the extent to which residents of colonial territories produced knowledge themselves that was packaged and sent to the metropole.⁹⁴ Likewise, legal historians of early modern France have shown how a wide variety of court participants influenced state-building processes from a local scale, but similar colonial cases have been left out of this story.⁹⁵ French scholars have tracked local elites, particularly court officials and aristocrats, as crucial actors who helped connect state participants across social classes, but they have not acknowledged the extent to which European, Antillean, and Mascarene actors were enmeshed in the

⁹⁴ E.g. Jacob Soll, *The Information Master: Jean-Baptiste Colbert's Secret State Intelligence System* (Ann Arbor: University of Michigan Press, 2009); Swann, *Politics and the Parlement of Paris*.

⁹⁵ Including Hardwick, *Family Business*; Hayhoe, *Enlightened Feudalism*; Schneider, *The King's Bench*; Kessler, *A Revolution in Commerce*; Breen, *Law, City, and King*.

same choreography of judicial practices.⁹⁶ A global framework is also necessary for studies of social collaboration and judicial negotiation within emerging European states, which took place through the parallel creation and development of courts and legal tools in Europe and overseas colonies.⁹⁷ Shifts in imperial strategy, like from North America to the Indian Ocean after the Seven Years' War, indicated changing economic and political priorities (not just reconfigured geopolitics) and can be charted through colonial judicial history.

In the colonial context, scholars have most often focused on two big questions: "why failure?" (like the loss of Canada in 1763) and "why revolution?" (especially the French and Haitian Revolutions), whereas this project demonstrates that a better question is "how did France make an empire?" This question reframes France's *ancien régime* empire as a work in progress, not a doomed project, and emphasizes the contingency of the entire enterprise, rather than its weakness at a few critical moments. This project revises studies that emphasize the failure of France to secure an overseas empire, especially during the eighteenth century through imperial overstretch and competition, by showing the remarkable resilience and popularity of the *conseils*.⁹⁸ Changing imperial

⁹⁶ For more on this idea of a choreography of justice, see chapter three. Sharon Kettering emphasized the degree to which patron-client relationships tied into broad, multilevel networks, a pattern Sara Chapman has documented in the transatlantic Pontchartrain family. Sharon Kettering, *Patrons, Brokers, and Clients in Seventeenth-Century France* (New York: Oxford University Press, 1986); Sara Chapman, "Patronage as Family Economy: The Role of Women in the Patron-Client Network of the Phélypeaux De Pontchartrain Family, 1670-1715," *French Historical Studies* 24.1 (2001): 11-35. Merchant families have been a popular lens for transatlantic studies of similar relationships, but this study shows how law (and imperial office-holding more generally) offered similar opportunities. For merchant families, see, e.g. Robert Forster, *Merchants, Landlords, Magistrates: The Depont Family in Eighteenth-Century France* (Baltimore: Johns Hopkins University Press, 1980) and David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785* (Cambridge: Cambridge University Press, 1997).

⁹⁷ Three crucial studies are Kagan, *Lawsuits and Litigants*; Beik, *Absolutism and Society*; Hindle, *The State and Social Change*.

⁹⁸ Pritchard, *In Search of Empire*; Kenneth J. Banks, *Chasing Empire Across the Sea: Communications and the State in the French Atlantic, 1713-1763* (Montreal: McGill-Queen's University Press, 2006).

boundaries were significant as courts created new outposts of French law both on the borders of metropolitan France and in the Atlantic and Indian Oceans.

This strategy also accounts for patterns of colonial governance that are often ignored in scholarship that analyzes the development of revolutionary ideas. Malick Ghachem and Louis Sala-Molins have studied and critiqued creole elites who espoused Enlightenment tolerance while profiting off of slavery, but they stay within the sphere of elite discourse in the form of legal codes and commentaries.⁹⁹ However, these forms of law were initially articulated and negotiated by French subjects within the space of the *conseils supérieurs*. As the face-to-face interactions within the *conseils* were increasingly documented and shared through print culture, they became preserved and exchanged in the form of legal codes and commentaries. While Laurent Dubois has introduced Guadeloupean slaves conversant in revolutionary rhetoric and John Garrigus has shown the remarkable influence of free people of color, the *conseils supérieurs* reveal how the colonial societies that would be remodeled during the French and Haitian Revolutions were created and functioned across a range of social layers.¹⁰⁰

METHODOLOGY AND EVIDENCE

A holistic examination of archival collections related to France's *ancien régime* empire reveals a wide range of imperial participants who rarely thought in terms of

⁹⁹ Ghachem, "Montesquieu in the Caribbean"; Louis Sala-Molins, *Dark Side of the Light: Slavery and the French Enlightenment* (Minneapolis: University of Minnesota Press, 2006). Similarly, Madeleine Dobie has emphasized how Enlightenment writing ignored the Atlantic and Indian Ocean colonies and slavery, despite the economic and material benefits they generated in metropolitan France. Madeleine Dobie, *Trading Places: Colonization and Slavery in Eighteenth-Century French Culture* (Ithaca, NY: Cornell University Press, 2010). All of this work relies heavily on the insights and provocations by Michel-Rolph Trouillot on how events, especially the Haitian Revolution, have and have not been "thinkable" by scholars and historical actors. Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995).

¹⁰⁰ Laurent Dubois, *A Colony of Citizens: Revolution & Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill: University of North Carolina Press, 2004); John D. Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (New York: Palgrave Macmillan, 2006).

Atlantic or Indian Ocean categories, but rather that they saw themselves as participants in a global empire. Well-documented administrators like Pierre Poivre in Île de France and Pierre Dessalles in Martinique appear in these collections as do hitherto unknown subjects like Pitre Paul, a shipworker, and Madame Blot, an inn-keeper. All of these people navigated the colonial and metropolitan sides of France's legal geography through interjudicial correspondence and conseil proceedings. As they participated in a global choreography of justice, they left evidence about their lives in personnel records, conseil registers (*greffes*), and printed legal works. These conclusions are reinforced by evidence about the physical landscape of this empire, especially the conseils as settings of justice, from maps and travel descriptions drawn from a range of French archives and American special collections libraries.

This study is based on a database constructed from an extensive collection of over 19,000 colonial personnel records in the Archives Nationales d'Outre-Mer in Aix-en-Provence.¹⁰¹ This collection includes records from all of France's *ancien régime* colonies, especially the Atlantic and Indian Ocean colonies that form the core of this study. The database encompasses a cross-section of colonial participants ranging from soldiers and sailors to planters, artisans, women investors, and emancipated slaves. Networks of conseil staff and imperial administrators were reconstructed and cross-referenced with other archival sources. They reveal that Martinique's conseil was centered on a much more local body of elites within the Caribbean, while Île de France's conseil tended to be much more connected to metropolitan centers and ventures throughout the Indian Ocean.

This project assesses the Antilles and Mascarenes, as well as their Atlantic and Indian Ocean contexts, together in each chapter so that comparisons can be made at a more local and specific level. It sets up Île de France and Île Bourbon in the Indian Ocean

¹⁰¹ ANOM COL E.

as peers of Martinique and Guadeloupe in the Atlantic Ocean in a global French *ancien régime* empire, rather than as outliers of an early modern French Atlantic. This strategy initiates comparisons among colonies at points throughout this project and avoids the tendency to view colonies in a linear progression from simple to sophisticated.¹⁰² Likewise, this strategy works against the typical method of comparing each colony individually with the metropole to emphasize local adaptations by colonial residents. New work on comparative imperialism has pointed to new ways to test the degree to which local circumstances and imperial affiliation made a difference in how colonial justice—and by extension, colonial society at large—was worked out by examining two different sites of French colonization, the Atlantic and Indian Oceans. Much of this work looks at case studies in distinct chapters or sections.¹⁰³ However, this approach can limit

¹⁰² In colonial British North American historiography, for instance, scholars have sought to identify “model” colonies and develop genealogies of colonial development, a trend that I want to avoid by looking at *simultaneous* developments while acknowledging distinct trajectories over time. Candidates for the origin story of British America (and, by extension, the United States) have ranged from New England to Barbados. Key studies in this vein include Jack P. Greene, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill: University of North Carolina Press, 1988); Andrew Jackson O’Shaughnessy, *An Empire Divided: The American Revolution and the British Caribbean* (Philadelphia: University of Pennsylvania Press, 2000); Karen Ordahl Kupperman, *The Jamestown Project* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

¹⁰³ Important examples that work across large spaces but within empires include April Lee Hatfield, *Atlantic Virginia: Intercolonial Relations in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 2004); Eric T. Jennings, *Vichy in the Tropics: Pétain’s National Revolution in Madagascar, Guadeloupe, and Indochina, 1940-1944* (Stanford, CA: Stanford University Press, 2001); P. J. Marshall, *The Making and Unmaking of Empires: Britain, India, and America C.1750-1783* (Oxford: Oxford University Press, 2005); Banks, *Chasing Empire Across the Sea*; Kathleen Wilson, “Rethinking the Colonial State: Family, Gender, and Governmentality in Eighteenth-Century British Frontiers,” *The American Historical Review* 116.5 (December 2011): 1294–1322. For two influential transimperial studies in Atlantic, but not Indian Ocean contexts, see Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France C.1500-C.1800* (New Haven, CT: Yale University Press, 1995) and John H. Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492-1830* (New Haven: Yale University Press, 2007). For a more global scale, see Burbank and Cooper, *Empires in World History*. A more recent wave of scholarship has sought to overcome imperial boundaries at a more local scale, emphasizing themes like trade and go-betweens, e.g. Christian J. Koot, *Empire at the Periphery: British Colonists, Anglo-Dutch Trade, and the Development of the British Atlantic, 1621-1713* (New York: New York University Press, 2011).

the degree to which comparative analysis can be made and can place case studies into artificial categories, boxed off from each other. The pathways connecting a global French legal regime appear when viewed from the lives of individuals and communities.

Second, this project examines laws and conseil cases from the Moreau de Saint-Méry collection of colonial jurisprudence to understand how French subjects maneuvered within the empire.¹⁰⁴ The extensive literature on early modern European and colonial Latin American courts and litigation served as models for exploring the virtually unknown *conseils supérieurs* as analogues to more familiar early modern courts like the *parlements* and *audiencias*. Many sources exist for the conseils in French archives, but they have not been systematically mined, especially as legal sources. Similar materials exist for the Atlantic and Indian Ocean islands and allow the investigation of the simultaneous development of empire in radically different settings during the eighteenth century. Antillean conseils were much more careful about keeping good legal records and they developed a more robust court system than those in the Mascarenes. The later development of the Mascarene conseils shows that it depended upon Antillean and metropolitan models, while its relative focus on local issues points to a heightened isolation from the Atlantic networks of legal correspondence that kept the Antilles and metropole much more consistently connected.

Finally, this project relies on a third set of evidence compiled from administrative and personal correspondence as well as law codes, customs, and commentaries. Council records (*greffes*) appear in all of these archival series as the councils registered laws and official correspondence in addition to court case documents. Though these records have been used to reconstruct histories of slavery and other colonial topics, historians have not analyzed the cultural production of these documents to understand the structure of

¹⁰⁴ ANOM COL F/3.

colonial institutions and the perspectives of court participants like plaintiffs, judges, and witnesses. Sources like legal codes were most often created from court records, so they are actually derivatives of the second set of evidence. Uncovering the processes by which judicial actions and imperial correspondence were collected and codified shows how legal practices evolved over time.

OVERVIEW

This project analyzes France and its Atlantic and Indian Ocean colonies together in five chapters. The outer chapters (one and five) focus on questions of legal space: how knowledge circulated within and outside the *conseils supérieurs*. They focus on the environment and geography in which conseil magistrates and participants worked out ideas about law and political economy. The inner chapters (two through four) emphasize the interactions of people within the *conseils*: as conseil members, litigants, and reformers. The project's narrative thus zooms in from the overall legal geography of France's overseas empire to the setting of the courts, to the courtroom personnel, then to a wider array of conseil participants interacting within the *conseils*, then out to spaces created when controversies within the *conseils* forced members to rely on alternative methods of dispute resolution. From here, this project expands the discussion to include regional and global circuits of knowledge as legal knowledge created within the *conseils* was written, codified, and shared.

Chapter one, "Courtrooms in Colonies," introduces the *conseils* as sites that were duplicated across France's *ancien régime* empire. It argues that the physical setting of justice, configured globally in a legal geography of courts, was critical to the creation and acquisition of legal knowledge. Colonial residents were familiar with the location of judicial proceedings—the *palais de justice* in each colonial capital—and that the environment of courtrooms shaped the kinds of relationships that would be formed within

it. Violent crimes in rural areas (and alleged slave conspiracies) could prompt extraordinary court proceedings that lasted several days, but the monthly rhythm of most court meetings meant that they dealt with a wide variety of cases (procedural, criminal, and civil) in quick succession. Seasonal meetings and urban settings also influenced the judicial rhythms in each colony.

Chapter two, “The Corporation of Courts,” focuses on conseil personnel as communities of elites whose careers and social patterns (like marriages among local elites) reveal transregional pathways through which legal knowledge traveled and political power was consolidated. Marine personnel united France’s overseas empire into a community through careers that often spanned the Americas, Europe, and the East Indies. As governors and military officers, intendants and court officials, they presided over court meetings and brought a combination of hands-on governing experience and metropolitan legal expertise to conseil deliberations. Local elites, especially planters, and ambitious colonists also worked on the conseils as magistrates, to create family dynasties that merged commercial and political power, whether more locally (as in the Antilles) or globally (as in the Mascarenes).

Chapter three, “The Choreography of Justice,” widens this perspective from the conseil members to include court participants. Court practices became known patterns to a wide variety of litigants as a “choreography of justice” that participants could follow as they sought to resolve cases on diverse issues like bankruptcy, assault, and theft. This chapter examines civil and criminal cases together, as they would have been heard by the conseils, and argues that historians have skewed our understanding of colonial jurisprudence through an overreliance on criminal cases when in fact most cases were civil matters. The small population of elites of Atlantic and Indian Ocean islands not only served side-by-side on the conseils, but also fought long legal battles against each other

in these courts over debts and property lines. More marginalized populations, like free people of color, used the conseils to establish legal proof of their status and sometimes even appealed cases all the way to royal courts in France. Slaves also appear as court participants, sometimes even as witnesses, though they were only legally allowed to appear in criminal jurisdictions. Though most cases in France and its colonies rarely reached a definitive judgment, the choices made by litigants like free women of color, wealthy planters, and slaves reveal conseils as sites for legal negotiation among all levels of colonial society.

Chapter four, “Contesting Jurisdiction,” shows that tensions within individual units of France’s overseas legal geography could be as much of a challenge for the cohesion of the whole as the physical distances that separated each conseil through two case studies, one from Île de France and one from Martinique. Clashes among conseil officials focused attention on disagreements about how colonial society should work and forced colonial residents to decide who would be in charge, most frequently within the conseil community. However, losers these conflicts could find themselves banished from the colonies, forced to make their way to French soil for appeal, or left floating on the waters in-between, outside of any French jurisdiction. Nevertheless, knowledgeable subjects used tools that complemented the conseils, like interjudicial correspondence and advocacy through local assemblies when conflict within the conseils made traditional judicial methods unfeasible. Their actions indicate that the choreography of justice acted out inside the conseils was linked into an empire-wide choreography that included the metropole as well as the colonies, even if there were empty spaces in between. France’s royal jurisdictions were not coterminous, then, but were instead fraught with holes through which French subjects could be pushed. However, once caught outside French

jurisdiction, banished subjects sought to work their way back in so that they could access legal forums like the conseils and royal councils.

Chapter five, “Codifying the Law,” argues that legal knowledge created in the conseils supérieurs was shared, interpreted, and politicized in colonial legal codes that were published increasingly frequently over the course of the eighteenth century. Legal codes and commentaries were produced by conseil members, especially in the Antilles and much less often in the Mascarenes, to stabilize, publicize, and manipulate legal knowledge that created by both local magistrates and metropolitan administrators in France. Codifiers like Pierre Dessalles in Martinique in the Antilles collated valuable information about the conseil’s judicial practices and attempted to make legal knowledge more public as a “legislative tableau,” but they also defined creole ideas about colonial history and legality. These were political projects designed to promote particular conceptions of conseil authority and colonial law and they refracted both colonial debates that had originated in the conseils (like over slave treatment) and metropolitan debates that issued from the *parlements* (like over the courts’ rights to petition the monarch). Similar codes, like by the Île de France administrator Delaleu, were created in the Indian Ocean islands but at a much later date and less frequently, which indicates that Indian Ocean legal knowledge tended to be more dispersed among court participants and magistrates rather than, as in the Atlantic colonies, preserved and revised over time in codes. Though chapter one anchors the conseils as physical places that brought people together face-to-face, this chapter shows how the legal knowledge created in conseils traveled beyond the courtrooms, via commentators like Dessalles and Delaleu and conseil participants.

Chapter One
Courtrooms in Colonies:
The Legal Geography of France's *Ancien Régime* Empire

In early 1683, one of the first colonial intendants, Patoulet, sent a proposed plan from Martinique to metropolitan France for the renovation of Martinique's *palais de justice*, which contained the conseil supérieur's chambers and prison.¹⁰⁵ The existing *palais* consisted of a large rectangular *salle du conseil* for hearings and a smaller *chambre du conseil* for deliberations among magistrates and interrogations of court users. In the basement, a single prison cell and solitary confinement chamber (*cachot*) could hold criminal defendants—often slaves—while behind the conseil chambers lay a larger walled prison courtyard, with a small house for the jailer in the back corner. Patoulet suggested expanding this complex to add another large walled courtyard to the front of the *palais de justice* for court visitors. This more public courtyard would open onto the Fort-Royal streets from a single central gateway set off by a porter's room and a common room, presumably so that guards could monitor the arrival and departure of court users and personnel.¹⁰⁶ Conseil spaces were carefully constructed to separate judicial activities, like deliberation and hearings, and court participants, from prisoners to magistrates. The setting of justice in each specific iteration of France's legal geography was critical to the creation and acquisition of legal knowledge as it gave court users and personnel clues about how they were expected to act. These settings also limited the spaces in which they

¹⁰⁵ In the colonies (and similar to metropolitan France), intendants were royal administrators charged with managing matters related to justice, finance, and police. For more on the intendants, see chapter two.

¹⁰⁶ Anonymous (Sent by Jean Baptiste Patoulet, Intendant of the American Islands), *Profil et eslevation du plan cy-dessoubs pour le palais [conseil supérieur] et prisons du fort Saint-Pierre de la Martinique*. 3 February 1683, ANOM 13DFC33C.
http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/notice?n=10&id=FR%20ANOM%2013DFC33C&qid=sdx_q1&p=1. Accessed 1 March 2013

could negotiate the law. Magistrates worked at the very center of the court complex, between the public courtyard that conveyed court users from the city streets to the courtrooms and the private courtyard for prisoners. They collected new laws given in France by the king and his ministers in the *palais de justice* and from there distributed them, alongside their own court rulings, to colonial subjects. Courtrooms were also gateways for colonial court users who wanted to sought conseil audiences as a means of accessing metropolitan authorities via judicial appeal or interjudicial correspondence. Conseils were thus spaces in which notions about legality, or legal practices, were negotiated both locally and imperially.

The similarity of these spaces in each of France's territories made it possible for a common legal culture to develop in the eighteenth century. Martinique's conseil headquarters were one judicial entrepôt among a global array of conseils supérieurs across France's *ancien régime* empire that was built during a period of imperial growth that began around the time of Patoulet's plans, in the 1680s, and lasted into the decade preceding the French and Haitian Revolutions, the 1780s. Judicial buildings like Martinique's *palais de justice* were constructed during this period across France's *ancien régime* empire, from Louisbourg and Saint-Domingue in the Atlantic to Pondichéry in the Indian Ocean, to host French magistrates and court users who participated in a common legal culture during this era. All conseil buildings included a public room for hearings and a smaller room for conseil deliberations.¹⁰⁷ Some *palais de justice* also had specific

¹⁰⁷ Compare, e.g. plans for *palais de justice* in Louisbourg, Cap-Français (Saint-Domingue), and Pondichéry (India) with those for Martinique. Unfortunately, no architectural drawings have survived for the Mascarenes in the ANOM. Etienne Verrier, *Plan pour servir à l'Etablissement des Prisons de la Ville de Louisbourg et du Logement du Geolié, sur lequel seront les salles du conseil superieur, le tout relatif à l'estimation cy jointe* (1737). ANOM F3/290/47. http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/notice?n=80&id=FR%20CAOM%20F3/290/47&qid=sdx_q0&p=4. Accessed 1 March 2013 ; Anonymous, *Plan du palais de justice du conseil supérieur [Pondichéry, India]* (1788). ANOM 26DFC627B. http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/notice?n=2&id=FR%20CAOM%2026DFC627B&qid=sdx_q0&p=1. Accessed 4 March 2013; Duparquier (fils), *Plan de la maison du Roy, occupée par le*

rooms for conseil staff and the court registers. For example, a 1737 plan for the *palais de justice* in Louisbourg, in modern Canada, had almost exactly the same configuration as Patoulet's 1683 drawings for Martinique.¹⁰⁸ As conseils grew, *palais de justice* were expanded to include more room for conseil staff and records, including dedicated rooms for the court registers, or greffes, as were both the Martinique and Louisbourg conseils in the later 1730s.¹⁰⁹ No matter how elaborate these settings became, however, French subjects could expect to enter a judicial space that was configured similarly whether they accessed French courts in the Atlantic or Indian Oceans or in metropolitan France.¹¹⁰

Justice was concentrated in the conseils, which held legal knowledge both physically in the form of court registers and symbolically through court ceremonies, but as legal knowledge was created and negotiated in these places it circulated beyond the courtrooms. French subjects who had witnessed court proceedings shared legal knowledge as they gathered in public spaces like taverns. Town criers publicized court rulings orally by posting printed broadsides. Likewise, subjects brought expectations

conseil et le commissaire ordonnateur. Au Cap [Français, Saint-Domingue]. ANOM 15DFC385A. http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/notice?n=8&id=FR%20ANOM%2015DFC385A&qid=sdx_q0&p=2. Accessed 4 March 2013.

¹⁰⁸ Verrier, *Plan pour servir à l'Etablissement des Prisons de la Ville de Louisbourg* (1737).

¹⁰⁹ Compare, e.g. the following plans with the previous plans for Martinique and Louisbourg, from 1683 and 1737, cited above: Etienne Verrier, *Plans et Profil, coloré en jaune du Battiment proposé pour les prisons, Logement du Geolier et chambre du Conseil Superieur à Louisbourg* (1739). ANOM C11B39/103. <http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/pix2web?id=FR%20CAOM%20C11B39%2F103>. Accessed 1 March 2013 ; Vincent Houel. *Plan d'un palais, salles d'audiance pour le Conseil et la juridiction royale, prisons et cachots projettez au Fort Royal de la Martinique* (1732). ANOM 13DFC146A. http://anom.archivesnationales.culture.gouv.fr/sdx/ulyse/notice?n=11&id=FR%20ANOM%2013DFC146A&qid=sdx_q0&p=3. Accessed 4 March 2013.

¹¹⁰ Anonymous, *Profil et eslevation... du fort Saint-Pierre de la Martinique*. The Martinique conseil was based in Saint-Pierre until 1692 when it moved to Fort-Royal, which has remained the island's capital and is now known as Fort-de-France (for more on this point see below discussion). The archival information does not specify to whom this map was sent, though it was eventually collected in the Dépôt des Fortifications for all of France's *ancien régime* colonies.

about justice collected from these public sources with them as they took their cases to the conseils.

The acquisition and creation of legal knowledge depended upon access to and preservation of the conseils as sites that were duplicated across France's *ancien régime* empire. Courtrooms, specifically, were designated spaces in which French subjects came together in colonial and provincial capitals to work out social, economic, and other kinds of relationships. Residents brought their grievances from around each colony (and even from neighboring islands) to the conseil for judgment and violent crimes in rural areas (and alleged slave conspiracies) could prompt extraordinary court proceedings that lasted several days. Conseils also served as repositories for the decisions that were made from these cases and the laws that guided magistrates in the form of the court registers, or *greffes*.

Together, the conseils formed a legal geography of judicial entrepôts laid out across France's *ancien régime* empire.¹¹¹ They were located in French colonies in the Atlantic and the Indian Ocean as well as in frontier regions and new provinces like

¹¹¹ This is not to say that law was *only* negotiated in courtrooms, but rather to emphasize conseil meetings as a special places designated for legal discussion, as they were recognized within France through court deliberations and on special occasions like the royal *lit de justice* ceremony, a ceremonial appearance of the king in the parlement chambers that signaled his absolute power over the representative body. As an analogy, salons in early modern France brought together intellectuals to discuss literature and politics (among other things) in a specific setting defined by particular social rules, but that by no means implies that literary and political discussions *only* happened in the salons. Julie Hardwick has recently argued that nonelite litigants and witnesses in early modern France actually used courtrooms to promote their conceptions of legality, e.g. regarding what counted as unacceptable domestic violence, in a pattern of negotiation from community to court rather than diffusion from court to community. See especially chapters two and three of Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009), 57-127. Though Sarah Hanley has previously charted how changing conceptions of state legitimacy were worked out through the vehicle of the *lit de justice*, scholars have not explored similar processes in colonial courtrooms. The *lit de justice* was never held in the colonies, but another royal ceremony, the *Te Deum*, was frequently held in all of France's European and colonial processions. Sarah Hanley, *The Lit de Justice of the Kings of France: Constitutional Ideology in Legend, Ritual, and Discourse* (Princeton, N.J: Princeton University Press, 1983). For the *Te Deum*, see chapter four.

Alsace. French colonies had a much simpler legal geography than their metropolitan counterpart. They had fewer courts overall, with no merchant¹¹² or ecclesiastical courts. Though some courts overlapped in jurisdiction, like the conseils with admiralty courts, court cases followed a fairly standard progression from local jurisdictions to intermediary courts (known as *sénéchaussées*) to the conseils. In any case, the conseils were considered supreme on the islands, so questionable cases were almost always referred there. Many cases also originated in the conseils.¹¹³ Only ten courts existed in Martinique and five in Île de France.¹¹⁴

Each judicial entrepôt had a consistent configuration, though the jurisdictional boundaries of this legal geography changed as French territorial borders and possessions

¹¹² There were, at least in Martinique, Guadeloupe, and Saint-Domingue, organizations called “chambres d’agriculture” and “chambres de commerce” but they were more associated with planters and economic matters like setting prices. They are as yet little-known to historians, but they appear not to have been granted as nearly much judicial power as the conseils. Evidence has not yet been uncovered that references similar organizations in the Mascarenes, though they likely existed. Malick Ghachem notes in passing that a Chamber of Agriculture Saint-Domingue was established in 1787 to replace the conseils supérieurs after they were dissolved that year, but the chambres d’agriculture actually co-existed with the conseils in at least in Martinique, Guadeloupe, and Saint-Domingue from the 1760s and magistrates, like Lhéritier de Brutelles in Saint-Domingue, sometimes served on both. In the mid-1760s, a man named d’Anglebermes worked for both Martinique’s chambre d’agriculture and chambre de commerce, while Robert Philippe Claude Deshayes was a member of Guadeloupe’s chambre d’agriculture around the same time. Raymond Bernardin was a member of the Port-au-Prince chambre d’agriculture around 1785. Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012), 192. ANOM COL E 285, Lhéritier de Brutelles; E 396, d’Anglebermes; E 125, Robert Deshayes; E 27, Raymond Bernardin.

¹¹³ As a general rule, for this study I have only investigated cases that fit clearly under conseil jurisdiction, omitting cases like maritime matters that were dealt with by both admiralty courts and conseils. I recognize that many cases were originated in lower courts, like the sièges royaux and *sénéchaussées*, but emphasize the conseils for the purposes of this study, noting that many conseil cases had originated in the lower courts and appeared in the conseils on appeal. Conseils did have original jurisdiction for many cases, too, a factor I take into account. Little research has been done for the lower and admiralty courts, lacunae that I plan to address in future projects.

¹¹⁴ These included lower courts (called *juridictions* or *sièges*), mid-level courts (called *sénéchaussées*), admiralty courts, and the conseils. Compiled from ANOM COL series A and E. One of the five in Île de France, the admiralty court, was actually constituted by the conseil magistrates. By comparison, Paris had at least twenty-two, many of which, like the Châtelet, were large and multifaceted organizations themselves. Richard Mowery Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994), 23.

were fought for, renegotiated, and contested again. Nearly every conseil had the same basic staff of a governor and intendant with several magistrates, a prosecutor, a bailiff, and some clerks. However, the actual running and composition of courts and their caseloads reflected local conditions: personnel, economic and social dynamics, and geopolitical challenges. As islands, the Antilles in the Atlantic and Mascarenes in the Indian Ocean had easily defined physical geographies, but their legal regimes reflected different concerns. The former relied much more heavily on regional networks within the Caribbean and longstanding local legal experience, while the latter's more isolated situation within the vast Indian Ocean system made them much slower to develop and more dependent upon the regional capital of Pondichéry in India and especially metropolitan France.¹¹⁵

This chapter interrogates the physical and legal geography of France's ancien régime empire through the institution of the conseils supérieurs. It analyzes conseils supérieurs as institutions that gathered many kinds of French subjects in particular spaces with many component parts including a physical structure and setting. Within these settings, conseils served as repositories for legal knowledge in the form of court registers, the *greffes*, which could be accessed by and shared among imperial participants in a variety of ways.¹¹⁶

¹¹⁵ For comparison, see Map 3, The Atlantic Ocean Region, Map 4, Caribbean Detail of the Atlantic Region and Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

¹¹⁶ Though scholars like Roland Mousnier have described ancien régime governing structures and personnel in metropolitan France in detail, no equivalent guide exists for the overseas colonies, which has made it difficult for scholars to build adequate comparative studies. Roland Mousnier, *The Institutions of France Under the Absolute Monarchy, 1598-1789*, 2 vols. Translated by Brian Pearce (Chicago: University of Chicago Press, 1979). One frequent criticism of Mousnier is that he presents institutions as static structures, a pitfall I overcome by demonstrating how individual conseil members and participants moved through France's global legal geography.

Historians of French colonies have looked at criminal courts to understand colonial patterns like slavery, yet they have not recognized the extent to which colonial jurisprudence was conducted along very similar patterns across the empire, from metropolitan France to France's most distant colonies.¹¹⁷ This study begins with a survey of the conseils and their settings in the French metropole and in the sugar colonies of the Antilles and Mascarene Islands. This section characterizes the conseils as physical places of meeting in colonial towns where conseil members gathered to hear cases, issue sentences, and administer laws. The conseils supérieurs heard both criminal and civil cases in the same courtrooms, often on the same day. Courtrooms across France's ancien régime empire had a standardized architecture and similar forms of conduct, which contributed to their perception as reliable and familiar forums. The geographical configuration of colonial towns—especially as they relate to ports and navigational routes connecting them to the metropole—is an important clue to how colonial residents and administrators understood the colonial and imperial worlds they were creating.

Second, this chapter examines the conseil *greffes* as sites in which legal knowledge was collected, inscribed, and referenced. These registers were kept in the conseil offices as a source of legal knowledge that included both instructions and laws issued by the colonial government as well as decisions and laws issued by the conseil itself. The greffes held information that was cited and circulated among colonial subjects and throughout imperial networks, forming and illustrating circuits of knowledge-sharing throughout the French legal system. Like the physical setting of the conseils themselves, the greffes formed sites of reference for subjects as they moved across and through the global span of France's overseas empire.

¹¹⁷ See, e.g. Natalie Zemon Davis, "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname," *Law and History Review* 29.4 (2011): 925–984; Ghachem, *The Old Regime and the Haitian Revolution*.

CONSEIL SUPÉRIEURS

Conseils supérieurs across the globe met in urban settings, usually in the center of the emerging colonial and provincial capitals.¹¹⁸ Conseil meetings in French colonies most often happened in a designated building, known as the *palais de justice*.¹¹⁹ In Basse-Terre, Guadeloupe, the *palais de justice* was located on the main road that led to the Place d'Armes (the main city square), just a few buildings down from the offices of the governor and intendant, the two chief administrators of each colony.¹²⁰ Judicial processes were allocated to these buildings as sites in which permanent colonial residents and temporary (or transient) visitors could resolve disputes in person under the supervision of colonial magistrates. Likewise, judges determined punishments in criminal proceedings in these places, where architecture and interior design exhibited symbols of royal authority and order.

¹¹⁸ A large literature on French metropolitan port cities also exists, especially studies on Bordeaux by Paul Butel, but secondary works on colonial towns has been slower to develop. For Bordeaux, see Paul Butel, *Vivre à Bordeaux sous l'Ancien Régime* (Paris: Perrin, 1999). The best work on colonial towns has been on the enslaved and free people of color who were more likely to live in urban areas than in rural plantation areas. See, for example, Dominique Rogers, "Les libres de couleur dans les capitales de Saint-Domingue: fortune, mentalités et intégration à la fin de l'Ancien Régime (1776-1778)," (Thèse de Doctorat, Université Bordeaux III, 1999) and Anne Pérotin-Dumon, *La ville aux Iles, la ville dans l'île: Basse-Terre et Pointe-à-Pitre Guadeloupe, 1650-1820, 1650-1820* (Paris: Karthala, 2000). There is a longstanding tradition of work that emphasizes connections between colonial port cities and the wider Atlantic, but more global studies that integrate the Atlantic and Indian Oceans have yet to appear. See, for example, Franklin W. Knight and Peggy K. Liss, eds., *Atlantic Port Cities: Economy, Culture, and Society in the Atlantic World, 1650-1850* (Knoxville: University of Tennessee Press, 1991) and Alejandro de la Fuente, *Havana and the Atlantic in the Sixteenth Century* (Chapel Hill: University of North Carolina Press, 2008). For an overview of colonial architecture in Saint-Domingue as the functional landscape and infrastructure of the colonial economy and society, see Jacques de Cauna, "Vestiges of the Built Landscape of Pre-Revolutionary Saint-Domingue" in *The World of the Haitian Revolution*, edited by David Patrick Geggus and Norman Fiering (Bloomington: Indiana University Press, 2009), 21-48. Though he mentions plantations, roads, and military fortifications, Cauna does not discuss the urban government buildings that would have included the headquarters of the colony's two conseils.

¹¹⁹ In fact, a 1726 instruction from the king to the conseils of Saint-Domingue forbid them from meeting as a body in churches or other places besides their official chambers ("salle de réunions"). ANOM COL A 28 F° 132, 17 September 1726.

¹²⁰ "Plan de la ville de Basse-Terre dans l'isle de Guadeloupe présenté à M. le Comte de Nolivos par le Chevalier de Novion" (n.d., ca. 1768). Cited in Pérotin-Dumon, *La ville aux Iles, la ville dans l'île*, fig. 7.7.

Besides the physical setting of the conseils, the specific geographical context of each conseil provided an important framework for the magistrates and other officials who populated them as well as for the colonial residents and overseas investors who used their services. The Antillean and Mascarene colonies, in this regard, resembled each other a surprising degree. Both sets of islands were small and subject to fierce tropical storms and volcanic eruptions. Both island groups were also strategic centers within wider oceanic trading systems so possession of these islands was often contested among emerging European empires: in both settings, French control was challenged first by Dutch competitors and later by the British. During imperial wars, both sets of islands came under British occupation (with Île de France, now Mauritius, remaining British after the Napoleonic wars).¹²¹

Antillean and Mascarene conseil settings contrasted, however, in terms of their wider regional context and proximity to each other. Islands like Martinique and Guadeloupe were within sight of neighboring (and dependent) islands, and only a few miles distant from each other and other colonies (like Saint-Domingue) so conseils were themselves close together. A longstanding association of creole elites with several different islands due to regional migration patterns also linked individual islands, like Martinique and Guadeloupe (but also Saint Lucia and Saint-Domingue, among others) into regional communities, in which conseil membership and elite status (especially as planters) went hand-in-hand.

The Mascarene conseils were adjacent, but not necessarily in easy distance of each other, as the monsoon winds of the Indian Ocean often made travel difficult. Travel times between Île de France and Île Bourbon were asymmetrical: to reach Île Bourbon

¹²¹ In both cases, the islands formed strategic outposts for contentions over the larger landmasses of North America and South Asia, both of which Britain had won decisively from the French by 1763, leaving France with these possessions in the Antilles and Mascarenes through the end of the eighteenth century.

took one day, but it often took a month to return to Île de France.¹²² While they were technically subjected to the Pondichéry government, far away on the South Asian coastline, they were in many ways much more isolated physically than the Antilles.¹²³ Intercolonial networks of personnel did exist, but in a much more limited form: most often as merchant elites-turned-magistrates who used the Mascarenes as a base for Indian Ocean trade and military governors who managed excursions to Madagascar and South Asia to defend French interests.

Antilles

As one of the oldest and busiest colonial courts as well as one of the best-documented, Martinique's conseil is an excellent point of departure for a study of France's overseas legal geography.¹²⁴ Established in 1664, by the mid-eighteenth century it was prominent enough to be included in Diderot and d'Alembert's *Encyclopédie*, originally published from 1751 to 1772, which did not include any other colonial

¹²² Jacques-Henri Bernardin de Saint-Pierre, *Journey to Mauritius*, Translated with an introduction and notes by Jason Wilson (Oxford: Signal Books, [1773] 2002), Letter 19, Réunion [Île Bourbon], 21 December 1770, 180.

¹²³ The relationship between insular colonies, like the Antilles and Mascarenes, with mainland colonies, like Louisiana and Pondichéry, deserves more attention. For a survey of France in India during this period, with special attention to Pondichéry, see Aniruddha Ray, *The Merchant and the State: The French in India, 1666-1739*, 2 vols. (New Delhi: Munshiram Manoharlal Publishers, 2004).

¹²⁴ Even in the eighteenth century, Martinican magistrates like Jacques Petit de Viéville and Pierre Dessalles were writing their own judicial history. Creole families, especially the Dessalles, turned this kind of writing into a sort of industry, composing histories of the island well into the nineteenth century. E.g. Adrien Dessalles, *Histoire générale des Antilles*, 5 Vols. (Paris: Libraire-Éditeur, 1847-48). For a discussion of these sources (particularly the legal codes) see chapter five. The set-up described for Martinique's conseil also seems to match the urban legal setting of the Saint-Domingue conseils. See, for instance, Moreau de Saint-Méry's detailed descriptions of Cap-Français and Port-au-Prince (and many maps) in his description of Saint-Domingue. M. L. E. (Médéric Louis Elie) Moreau de Saint-Méry, *Description topographique et politique de la partie espagnole de l'isle Saint-Dominque*. (Philadelphia, 1796). Specific court buildings were also constructed in smaller colonies for the more local jurisdictions that we know very little about. In 1767, the royal government at Versailles issued an ordinance authorizing the construction of prisons and a building for judges of the local jurisdiction to assemble so they could render justice in Le Carénage, Saint Lucia. It also levied a tax of three livres per slave to finance the project. ANOM COL A 11 F° 433, 21 December 1767.

conseils.¹²⁵ The entry noted that the conseil was the sovereign court (*tribunal*) of Martinique, residing at Fort Royal, which was the military and administrative capital. The conseil, according to this article, had a governor-general for the French Antilles, a particular governor of Martinique, twelve magistrates (*conseillers*), one prosecutor (*procureur général*), and two royal lieutenants (who served under the governor). All of these people were given the right to weigh in on court cases, a privilege known as deliberative voice (*voix délibérative*). The conseil was also overseen by an intendant, a royal official who acted as the civil representative for the French monarchy as a complement to the military role played by the governor. Conseils were established as communities of legal experts that included the highest governing authorities who resided in the colonies and a range of specific officers.

French colonial towns were almost always laid out on a grid pattern that spread out from a military fortification (or redoubt) that occupied the most strategic location for defense. Martinique's conseil met in a *palais de justice* in Saint-Pierre until 1692, when it moved approximately twenty miles south to Fort Royal where the colonies' governor general and the seat of military governance had moved in 1678.¹²⁶ In Fort Royal, Martinique, this meant that the main garrison was built on a rocky outcrop that jutted out into the island's largest bay, known as Cul de Sac. Fort Royal's location on the leeward side of the island (away from the Atlantic, facing the Caribbean) meant that it occupied a strategic position to see commercial and other kinds of traffic that moved up the coast

¹²⁵ Entry for "Conseil supérieur de la Martinique," *Encyclopédie, Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, eds. Denis Diderot and Jean le Rond D'Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed.), <http://encyclopedie.uchicago.edu/>, Vol. 4, 14. It did include entries for the complementary conseils within France, like Roussillon.

¹²⁶ Émile Hayot, *Les Officiers du Conseil Souverain de la Martinique et leurs Successeurs les Conseillers de la Cour d'Appel: Notices Biographiques et Généalogiques* (Fort-de-France: Annales des Antilles, 1965), 34. The governor general ruled over Martinique and Guadeloupe, as well as Saint-Domingue at this time.

northwards toward Saint-Pierre and other islands in the Antillean chain, like Guadeloupe that lay approximately fifty miles to the north of Martinique. The main military garrisons at Fort Royal, Caze Pilote, and Saint-Pierre formed a chain from south to north on Martinique's western coastline, so word could be passed up from one to another in the event of a foreign attack. Most ships seem to have arrived in Martinique from the south, so it made sense to fortify Fort Royal the most as a protection against the more vulnerable and more valuable trading center of Saint-Pierre to the north. The move of the governor general to Fort Royal in 1678 seems to have been prompted by this favorable position, especially after the successful defense of the area in 1674 against a Dutch fleet commanded by de Ruyter.¹²⁷ Defensive concerns factored into where the governor lived and, consequently, into the location of the conseil. The core of colonial governance, including the site of courts, depended upon the location of key colonial administrators, especially the governor.¹²⁸

The conseils were high courts that represented the French monarchy in the colonies and carried the full authority of the French legal system backed by a monarch who claimed (at least in theory) absolute power, so the physical orientation of courtrooms was designed to remind court participants of the symbolic and real power that lay in the hands of conseil magistrates in the colonies and that was undergirded by metropolitan

¹²⁷ Sieur de la Calle, *Relation du S. de la Calle: sur ce qui s'est passé a l'attaque du Fort Royal de la Martinique par la flote de Ruiter*, Edward E. Ayer Manuscript Collection, MS 480, [1674?], Newberry Library.

¹²⁸ Intendants seem to have been a bit less influential regarding the location of conseils, though as the presiding officers for conseils (with real power rather than the symbolic role played by the governors) their offices were always in the same town as the governor and conseil. This may have to do with the fact that governors were appointed for colonies before the intendant system was set up in the colonies (e.g. Martinique was initially governed by its founder, d'Esnambuc, as early as the 1630s, but it did not get an intendant until Jean-Baptiste Patoulet was appointed for the Antilles in 1679).

administrators (and ultimately the king) in France.¹²⁹ In the 1710s, the Martinique *palais du Conseil* or *palais de justice* was actually a house that had been rented from a Sieur Gros on the Place d'Armes, or central square, in Fort Royal.¹³⁰ The building had a large main room for court proceedings that was divided by a railing that divided the audience from the magistrates. On one side of the railing was a raised floor for the large table (decorated in *fleurs-de-lis*) at which the conseil members sat *en banc*. To each side of the table, there was a room for the conseil members and the greffe, respectively. On the floor above this main chamber were eight rooms that could be rented out by conseil members who were visiting for the monthly meetings. These rooms were very expensive, however, so the conseil members appear to have continued to stay in local inns or cabarets. Most magistrates were traders or plantation owners, so most likely they planned to conduct personal as well as official business when they came to town for conseil meetings. The inclusion of rooms for conseillers within the walls of the palais de justice implies that royal administrators expected them to observe strictly limited activities while in session. However, the practice of the conseillers staying in local inns illustrates a desire among these colonial residents to conduct their own business (or at least to socialize) outside the confines of the conseil.

The conseil building had other rooms that more directly contributed to judicial practices. The house in Fort Royal was large enough that it also had a central courtyard, along two sides of which were the rooms of a jail (including cells), a covered exercise

¹²⁹ Specifically, at Versailles where the Ministry of the Marine (which managed colonial matters) was located: physically and symbolically at the very heart of the *ancien régime*. For an overview of the longstanding debate on how “absolute” this power was in France, see William Beik, “The Absolutism of Louis XIV as Social Collaboration,” *Past & Present* 188 (2005): 195-224.

¹³⁰ In 1722, the Intendant Benard bought the house for 12,000 livres to make it government property. Jacques Petitjean Roget, *Le Gaoulé: La révolte de la Martinique en 1717* (Fort de France: Société d'histoire de la Martinique, 1966), 148.

area (*préau*), and the jailer's rooms.¹³¹ Prisoners who had transgressed colonial laws were kept within the confines of the palais de justice, near the courtroom in which they had been convicted and near the greffes that held the legal prescriptions and evidence used by conseillers in criminal decisions.¹³² The greffes, or the council registers, were also stored in this building in a special room known as the *chambre de greffe*.¹³³ Legal knowledge in the form of records was housed permanently near the courtroom where laws were enforced and local legal practices created. The courtroom represented the negotiation of colonial justice, but these two side rooms signified the continuance of judicial authority over time (in the registers' records of cases) and the constant threat of punishment for those who questioned that authority.

In the early decades of the conseil, the governor presided over meetings, which included a panel of ten members chosen by the king from among militia officers. By 1713, the Martinique conseil included eleven *conseillers titulaires* (acting conseillers) and five *conseillers honoraires* (a semi-retired role).¹³⁴ The court was set up to render justice to all French subjects in the colony and nomination by the king was meant to counteract venality (or, the buying and selling of offices).¹³⁵ The conseil was required to meet once a month to render justice freely, a mandate that was meant to enable all colonial residents (except for slaves) to enter complaints rather than just a few elite planters.

¹³¹ Ibid., 147-8.

¹³² This is an interesting contrast to executions, which nearly always happened outside the city limits in public and outdoor settings. I do not mean to imply that prisoners were always guilty, but rather to explain the logic behind the colonial judicial order. For a discussion of crime as defined by colonial courts, see chapter four.

¹³³ Hayot, *Conseil*, 33-4.

¹³⁴ Petitjean Roget, *Le Gaoulé*, 149.

¹³⁵ Ibid., 147.

Judicial sites were dispersed throughout the Caribbean to form regional networks of courts and personnel in a pattern that contrasted from the more isolated (and few) Indian Ocean conseils. Cases tended to aggregate toward the colonial administrative centers at Basse-Terre and especially Fort Royal from agricultural areas scattered across many islands. Guadeloupe's council was inaugurated in 1664, at the same time the king issued letters patent for Martinique's conseil, while Saint-Domingue's conseils dated from the seventeenth century, and even Guyane had one by 1701.¹³⁶ Martinique's conseil played an important role as a jurisdiction for several small island dependencies like Grenada and Saint Lucia.¹³⁷ However, Martinique was the seat of government for all of the French Antilles until 1714 (for Saint-Domingue) and 1762 (for Guyane and Guadeloupe). Guadeloupe illustrates this regional arrangement, as cases came to its conseil and then were sometimes sent on to Martinique's conseil rather than the metropole.¹³⁸ This pattern shows that administrators tried to keep (and clear) cases in colonial settings rather than letting them be appealed to metropolitan jurisdictions.

¹³⁶ For Guadeloupe and Martinique conseils, letters patent issued 11 October 1664 for both. ANOM COL B 3 F° 114 (Departing Correspondence). Cayenne, Guyane (in South America) was managed as part of the *Îles du Vent* government in Martinique from 1669 until the mid-eighteenth century. In practice, however, it communicated directly with the metropolitan government and acted autonomously. Archival note, ANOM COL Série C8A Correspondance à l'arrivée en provenance de la Martinique (1635/1815). See also Marie Polderman, *La Guyane française, 1676-1763: Mise en place et évolution de la société coloniale, tensions et métissages* (Petit-Bourg: Ibis Rouge, 2004). Guyane depended upon Martinique for supplying its plantations with slaves and manufactured goods and like the rest of the South American mainland (including Spanish colonies) was very heavily involved in illicit trade with the Antilles to make up for trade deficits and lack of provisions. Louisiana's conseil was founded around the same time, though the date is a bit uncertain (between 1716 and 1731) due to difficulties in having the letters patent followed correctly by company and other Louisianan officials. Khalil Saadani, "Le Gouvernement de la Louisiane Française, 1731-43: Essai d'Histoire Comparative" *French Colonial History* 4 (2003): 117-132.

¹³⁷ Guadeloupe served as a regional forum, too, but mostly for its very small off-shore dependencies of Les Saintes, Marie-Galante, and La Désirade.

¹³⁸ After these years, the colonies listed in parentheses became independent administrative regions. However, appealed cases sometimes traveled from one conseil, like Guadeloupe, to the metropole where royal administrators often chose to send appealed cases to a different conseil, like in Martinique, rather than ruling themselves. See chapter three for more on this pattern.

There were some asymmetries in this arrangement, especially when conseil members were themselves involved in litigation. In these cases, the availability of several colonial jurisdictions within a region created opportunities for plaintiffs and defendants to resolve conflicts through local courts rather than having to travel to France. Metropolitan officials likewise could review cases to make sure they followed royal orders, but could delegate the final judgments and details of cases to the colonial judges. In the late 1720s, a Sieur de Rez, who was a conseiller in Guadeloupe, and Pierre d'Espert, a Guadeloupean planter went to court in the Guadeloupe conseil over a property dispute.¹³⁹ The local nature of the dispute—especially over property—highlighted the value of having a local forum in which to work out conflicts rather than having to resort to metropolitan courts (in port cities, for instance) or wait on correspondence with colonial officials in France.

However, Rez appears to have had a conflict of interest as a member of Guadeloupe's conseil. As a conseiller, Rez had a deliberative voice in conseil deliberations (*séances*) and the right to meet with other council members while they decided his case, giving him a right to judge on his own case. When the Ministry of the Marine reviewed the case in 1731, they issued an *arrêt* to overturn a decision by Guadeloupe's conseil in 1729, but instead of ruling themselves they sent the case to the Martinique conseil for a final decision.

The final referral of this case by the ministry to Martinique indicated a desire to invest local authorities with the practical details of colonial governance but signaled the ever-present power of the Versailles ministers to intervene if local magistrates made ill-favored decisions. This multi-step trajectory, in which a single case journeyed from colonial (and local) to metropolitan and finally back to a regional jurisdiction highlights

¹³⁹ ANOM COL A 2 F° 120, 24 September 1731. This document does not specify, but most property disputes like this involved plantations.

some of the possible directions that colonial justice could take: local, regional, and empire-wide.

Mascarenes

The conseils supérieurs of the Indian Ocean were similarly staffed with French officials as the Atlantic conseils and they were under the same mandate to enforce and comply with French law. However, the wide physical distances between the Indian Ocean colonies (and thus conseils) meant that the courts were somewhat more isolated both from each other and from metropolitan oversight. In the Indian Ocean, Mascarene courts were critical because they provided access to French legal services that were difficult to access elsewhere. In the seventeenth century, French forays into the Indian Ocean had centered on Madagascar as a base for slave trading with the East African coast as well as commerce with the East Indies. Colbert even sent royal orders to set up a conseil there, but piracy and unfriendly indigenous groups made these early trips unsuccessful, so the Mascarenes were colonized as an alternative.¹⁴⁰ By the first half of the eighteenth century, Pondichéry, India and its adjacent trading *comptoirs* were almost always at the center of colonial objectives in the Indian Ocean as French traders organized under the *Compagnie des Indes* sought to take part in the South Asian textile and spice trades alongside other European powers. Between these two regions, the small and previously uninhabited islands of Île de France and Île Bourbon (now Mauritius and Réunion) occupied a strategic center for military and commercial operations.¹⁴¹

¹⁴⁰ A royal letter from 1669 ordered the Madagascar *conseil souverain* to recognize the new governor, but it was followed soon after (in 1670) by a ruling by the king's council that suppressed the conseil. ANOM COL B 1 F° 189 (4 December 1669), ANOM COL B 3 F° 11 (12 November 1670). In fact, French designs on Madagascar would prove as longstanding (and doomed) in the Indian Ocean as similar plans for Guyane in South America throughout the seventeenth and eighteenth centuries.

¹⁴¹ For context, see Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

These commercial and military activities also created the need for judicial institutions that could manage conflicts and complications that arose over issues like trading rights, successions, and personnel disputes. Indian Ocean conseils became key sites in which French participants in international trade could access the French legal system for arbitration and judgment without having to travel all the way back to France.

In the Indian Ocean, the development of judicial structures (and the colonial economy) went along a similar track as those in the Atlantic, but at a later pace. As late as 1671, even the Île de France governor lived in a simple house, enclosed by a palisade made from ebony, that was protected by only four small canon mounted on a platform near the water.¹⁴² The administration of the Mascarenes by the Compagnie des Indes Orientales from the 1664 to 1767 meant that the government of these islands was outsourced to them and they were under the jurisdiction of the company.¹⁴³ Île Bourbon had a provincial conseil from March 1711 to November 1729, when it was replaced by a conseil supérieur which met on Île Bourbon at Saint-Paul and later Saint-Denis, but had jurisdiction over both of the Mascarenes until Île de France got a conseil supérieur in 1734 and the seat of government was moved there soon after.¹⁴⁴ In 1767 (based on an ordinance from 1766), Île Bourbon's conseil became judicial only, losing its previous administrative privileges, though in practice the conseil continued both functions until 1791.¹⁴⁵ During company rule, conseillers and other officials (like governors) were

¹⁴² [Anonymous], *La relève de l'Escadre de Perse: voyage du navire du roy le Breton, commandé par monsieur Duclos avec deux houcres nommées le Guillot et le Barbot, Mars 1671*, Unedited text published from the manuscrit, edited and annotated by Philippe Fabry, (Montreuil: Ginkgo, [1671] 2004), 39.

¹⁴³ For an overview of European trading companies in the Indian Ocean, see especially Philippe Haudrère, *Les Compagnies des Indes orientales: Trois siècles de rencontre entre Orientaux et Occidentaux (1600-1858)* (Paris: Éditions Desjonquères, 2006).

¹⁴⁴ The conseil was moved in 1738-9. ANOM 6 DPPC 2708 Île Bourbon Greffe, 1 June 1739.

¹⁴⁵ Henri Joucla, *Le Conseil Supérieur des Colonies et ses Antécédents, avec de Nombreux Documents Inédits et Notamment les Procès-Verbaux du Comité Colonial de l'Assemblée Constituante* (Paris: Les Éditions du monde moderne, 1927), 20.

nominated by the company but in accordance with royal laws.¹⁴⁶ The French style of company administration included direct administration by royal appointees so the provisional councils established in the Mascarenes actually operated very similarly whether under company or royal rule. This company government was based in Pondichéry, India, until 1789.¹⁴⁷

Conseils supérieurs operated very similarly, whether in the Atlantic or Indian Ocean, though regional hierarchies were different. Like the Antillean colonies, the Mascarenes were put directly under French law when they became royal colonies, essentially deleting the layer of administration formed by the board of company directors. Their conseils were likewise given the mandate to register new laws in their greffes but given the ability to delay registration and publication of those laws as long as the governors and intendants consented. They could also create their own laws, to be registered alongside royal ordinances in the conseil greffes.¹⁴⁸ Unlike Martinique and Guadeloupe, the Mascarenes were subjugated to the conseil supérieur at Pondichéry in India, where the governor general presided over all French establishments in the Indian Ocean.¹⁴⁹ However, the long distances between the Mascarenes and both Pondichéry and

¹⁴⁶ See, for example Pierre Félix David, governor of Sénégal and later Île de France. ANOM COL E 111, Pierre Félix David.

¹⁴⁷ I have found better maps for Pondichéry than for the Mascarenes, even from early in the eighteenth century: e.g. *Carte Generale des Villes Fortes et Dependances de Pondichery, sur la coste de Coromandel avec les nouvelles acquisitions faite depuis M. DCC. VII.* [1707], Ayer MS Map 30, Sheet 24, Newberry Library. This map has remarkable detail, including the gallows on the edge of town, outlying lands own by various religious orders, and several cemeteries marked out for Christians, lapsed Christians (“des Parias Chrétien”), and Indian Christians. However, a *palais de justice* was not labeled. Pondichéry’s conseil had only been created in 1701, so it probably met in the governor’s house, too.

¹⁴⁸ Auguste Toussaint, *Early Printing in the Mascarene Islands, 1767-1810* (Paris: G. Durassié et Cie, 1951), 77.

¹⁴⁹ In terms of a regional arrangement, then, Martinique and Pondichéry’s conseils played similar roles as dominant courts in the Atlantic and Indian Oceans respectively. This lasted until 1789, when Île de France became the center of Indian Ocean governance.

France gave the Mascarene conseils space—both in terms of geography and time—in which to make their own decisions without oversight.

In the Mascarenes, accommodations and workspace do not appear to have existed within a single building as they did in Martinique, as few references to the conseil setting survive. However, the Mascarene conseils had very similar personnel and activities, so it is likely that they operated along the same principles as those in the Antilles. Each Mascarene conseil met in each colony's largest town and center of governance, where royal administrators like the governor and intendant lived. Conseils supérieurs in the Indian Ocean were not given specific buildings, as in the Antilles. Both Mascarene conseils met in the house of local governor (*gouverneur particulier*), implying that conseil meetings were initially set up like the house owned by Sieur Gros in Martinique.

Unlike the Antilles's bustling ports with stone buildings, Mascarene towns were still in the early stages of urban development even as late as the mid-eighteenth century so the physical setting for conseil meetings resembled frontier outposts more than emerging cities. In Île de France, Port Louis's one-story buildings were mostly constructed of wood, with each building surrounded by a palisade along streets set up along a grid pattern.¹⁵⁰ In Île Bourbon's capital of Saint-Denis, only the main fortifications and a battery were built of stone.¹⁵¹ While more simple than Antillean construction, the governors' houses would have been the nicest structures in Port Louis and Saint-Denis. The governors themselves were responsible for fortifications and other construction projects on the islands, so they supervised the construction of their own houses. They would have included several rooms for the governors to conduct meetings with their senior lieutenants (among whom several served on the conseils), which could

¹⁵⁰ Bernardin de Saint-Pierre, *Journey to Mauritius*, Letter 6 Port Louis, 6 August 1768, 95-6.

¹⁵¹ Ibid., Letter 19, Réunion [Île Bourbon], 21 December 1770, 185.

include conseil meetings as well as military planning sessions. At least one office or study would have been devoted to official records like the greffes and several clerks would have done their work in this office. The governor's house acted as the focal point of colonial activity. Magistrates like the conseillers, military officers, and civil employees like the intendant would have come in and out of this building to deliver messages, dispatch new instructions, and deliberate on official business like court cases.

This convergence of colonial elites was further reflected in the seasonal patterns of conseil meetings. Mascarene conseillers would have stayed in the governor's house when they came for conseil meetings, creating a seasonal concentration of legal experts in Port Louis and Saint-Denis. Unlike Martinique and Guadeloupe, which had thriving inns due to the busy influx of sailors, traders, and other visitors, the Mascarenes were more isolated, so they received fewer visitors and did not have any inns even as late as 1770.¹⁵² Upon arriving in Île Bourbon in 1770, the engineer and commentator Bernardin de Saint-Pierre learned that "there was no inn at Saint-Denis, nor anywhere else on the island, and that strangers usually lodged with those inhabitants with whom they were doing business." Instead, he was forced to seek refuge in the home of a local military officer.¹⁵³ Similarly, conseil members would have had to find accommodations among local residents. Mascarene colonies lacked facilities to house even the frequent arrival of newcomers from France and its other Indian Ocean colonies, pointing to a significant contrast between the formal space accorded to the Antillean conseils and the much more *ad hoc* organization of Mascarene conseils.

¹⁵² The personnel records, for instance, list at least one innkeeper for Martinique and Guadeloupe, but none for the Mascarenes or even Pondichéry. ANOM COL E, database.

¹⁵³ Bernardin de Saint-Pierre, *Journey to Mauritius*, Letter 19, Réunion [Île Bourbon], 21 December 1770, 181.

Conseil Routines

Conseil meetings created a routine of judicial activity that brought in magistrates and litigants from rural areas, especially plantations, into colonial capitals for hearings every month.¹⁵⁴ Most conseils, like the one in Martinique, met nonstop from the first day of each month until it had finished deciding cases, which usually took about a week. Conseils would work nearly constantly to clear their backlog of cases while the cabaret owners would cater food and drink. This monthly meeting cycle created a regular and predictable pattern of judicial processes.¹⁵⁵ As conseil members and French subjects became more and more accustomed to these processes, they contributed to a growing sense of local governance that was not always dependent upon metropolitan assistance.

However, royal representatives were important and consistent contributors to conseil practices. Intendants frequently oversaw conseil sessions, presiding over the deliberations, while governors participated as the king's representative in the colonies. The governor general was supposed to preside over the Martinique conseil as the king's representative, which gave a regional as well as local dimension to the proceedings. In the case of his absence the intendant or the most senior magistrate could pronounce sentences after having collected the responses of the other members.¹⁵⁶ In practice, however, the intendant had more power as the administrator in charge of justice and with

¹⁵⁴ A pattern which likely contributed to and correlated with seasonal market days, as has been documented for British North America, specifically eighteenth-century Virginia, by Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, [1982] 1999), 88-93.

¹⁵⁵ This implies steady, but by no means continuous, caseloads for the conseils. By comparison, two of the busiest courts in France, the Châtelet and Parlement in Paris, met for a "relentless" average of 250 days per year. Andrews, *Law, Magistracy, and Crime*, 64.

¹⁵⁶ The leader of the conseil would "recueille les voix & prononce." "Conseil supérieur de la Martinique," *Encyclopédie*, Vol. 4, 14.

a direct mandate to enforce laws about finance and police (the intendant's other areas of authority).¹⁵⁷

In Martinique and other colonies, the intendant had the power to call conseil extra meetings (*séances extraordinaires*), most often to judge long or complicated cases (especially for crimes) that could not be dealt with during regular court proceedings. In the early decades of colonization, he could do this by himself but from 1718 to 1766, he had to get the cooperation of the governors general. After that, he could again call conseil meetings himself.¹⁵⁸ This variation in authority stemmed from the continuing negotiation of precedence among conseil members, especially the intendant and governor, as well as variations in royal policy over time.¹⁵⁹

Other special sessions, like the “mercuriales” held by *parlements* in France and the colonial conseils could be called to deal with questions about how well the courts conducted judicial procedures, which allowed for internal grievances to be aired among conseil officials. The “mercuriales” were special assemblies held on the first Wednesday (in French, *mercredi*, hence the term “mercuriale”) after Saint Martin, a saint's day in November, and the first Wednesday after the week of Easter in the spring. During these sessions, a court's president, general prosecutor, or one of the attorneys general would speak out “against the abuses and disorders that they had noticed in the administration of Justice.”¹⁶⁰ This biannual assembly created a time in which conseillers and other officials

¹⁵⁷ For more on governors and intendants, see chapter two.

¹⁵⁸ Hayot, *Conseil*, 33-4.

¹⁵⁹ For more on conflict within the colonial government, see below and chapter four.

¹⁶⁰ However, in this case royal administrators later overturned the *mercuriale's* decision. ANOM COL A 19 F° 136, 22 October 1773. The case concerned the general prosecutor, Ribes, whose case is dealt with more fully in chapter four. For more on appeals to the metropole, see chapter three. Entry for “mercuriale,” *Dictionnaire de l'Académie française*, 1st Edition (1694) and 4th Edition (1762), Accessed through ARTFL, *Dictionnaires d'autrefois*, <http://artfl-project.uchicago.edu/node/17>, 7 August 2012. Colloquially, a “mercuriale” was a reprimand.

could evaluate the degree to which other sessions had accomplished the goal of rendering justice to which they were called.¹⁶¹

The seasonal nature of these meetings meant that conseillers moved into the *palais de justice* temporarily and then returned to their other professions for the majority of the year. In 1676, a tavern (*cabaret*) owner in Martinique named Pierre Monnet obtained a tax deduction for his business by reserving a private room to provide the local court with food and drink when it met in the town of Saint-Pierre. By the 1770s, the Martinican conseil met in an enlarged *palais de justice* in Fort-Royal that included a room for dining, catered by a local inn-keeper.¹⁶² In the Antilles, conseillers often stayed in the conseil buildings and in the Mascarenes conseillers to come together at the houses of local governors. Conseil membership was a part-time office: unpaid conseil magistrates sometimes complained about the monthly meeting schedule (when they could be working on their more valuable plantations) so some councils met less frequently.¹⁶³ However, case loads were big enough that monthly (and even bi-monthly) sessions were standard across the overseas empire.¹⁶⁴

In France and the colonies, legislative and judicial functions were performed within the same governing bodies, rather than separated and were overseen (symbolically if not always in practice) by king, whose majesty and sovereignty was invoked in nearly

¹⁶¹ For more on *mercuriales* in metropolitan France, specifically the Paris Parlement, see Albert N. Hamscher, *The Parlement of Paris After the Fronde, 1653-1673* (Pittsburgh: University of Pittsburgh Press, 1976), 167-7.

¹⁶² Pierre-François-Régis Dessalles, *Les Annales du Conseil Souverain de la Martinique*, T.1 V.1, 1st ed. Bergerac: J.B. Puynesge, 1786, Re-edited and reprinted by Bernard Vonglis, (Paris: L'Harmattan, 1995), 160-1. Paul Butel, *Histoire des Antilles françaises: XVIIe-XXe siècle* (Paris: Perrin, 2002), 173.

¹⁶³ E.g. Martinique's conseil until 1700. Hayot, *Conseil*, 33-4.

¹⁶⁴ One exception was in Île Bourbon following the transfer of the conseil from the town of Saint-Paul to Saint-Denis in 1939. The conseil met every Wednesday and Saturday until they cleared up a backlog of cases and finished the transition. ANOM 6 DPPC 2708 Île Bourbon Greffe, 1 June 1739, 93.

all of these documents explicitly. Conseils could judge on all cases that were brought to them directly and rule on appeals to decisions made by royal judges and their lieutenants. All of the councils issued their own decisions known as *arrêts*, which included rulings on court cases as well as local laws and ordinances. Conseils heard both civil and criminal cases, brought by a variety of litigants. The intendant, as chief financial officer of each colony and with a particular mandate to manage taxation, often instigated *arrêts* about the assessment and collection of taxes—especially in regards to the *capitation*, or head-tax, that was levied on plantations based on their slave populations.¹⁶⁵

Membership on the conseil carried prestige and also afforded the opportunity to weigh in on colonial issues, ranging from criminal punishments to tax exemptions. Conseillers were not paid for their services—a contrast to the many venal offices in France at the time—but were eligible for special privileges (*émoluments*), including time off and the opportunity to become ennobled, an honor that also came with special privileges like tax exemptions.¹⁶⁶ These privileges were highly sought by newly wealthy plantation owners and merchants who wanted political clout to match their economic status, especially as a means of developing metropolitan ties that could help their sons get

¹⁶⁵ Financial issues were sufficiently complex and important that the two Saint-Domingue conseils sometimes met together as one assembly in Cap-Français to work on them. Moreau de Saint-Méry cited one very long arrêt regarding tax policies and seigneurial rights that the two conseils registered in a joint meeting on 12 March 1764, which they then required to be “read, printed, published and attached [*affiché*]” everywhere. They also ordered copies to be made and sent to the lower jurisdictions reporting to the conseils to be registered in their greffes. M. L. E. (Médéric Louis Elie) Moreau de Saint-Méry, *Loix et constitutions des colonies française de l’Amérique sous le vent*, Vol. 4 (Paris: Chez l’auteur, 1784-1790), 705 and *passim*. As far as I know, no other councils met together in this fashion, though no other specific colony had two conseils.

¹⁶⁶ “Conseil supérieur de la Martinique,” *Encyclopédie*, Vol. 4, 14. The *Encyclopédie* says that conseillers were eligible for nobility after twenty years of service (corresponding to the status of *conseiller honoraire*) and for those who died in office. Interestingly, our modern words *vacances* or vacation for leisure come from the term “vacations,” which in the early modern period had a specific meaning of judicial bodies being out of session. For more on the letters of nobility sought by conseillers and other colonial participants, see chapter four. These cases form a distinct and numerous subset of cases dealt with by the conseils.

into the best Jesuit schools and law schools and their daughters to make good marriages. These benefits created opportunities for elite creole families to become more tied into the common French legal culture on both colonial and metropolitan sides of the empire through the legal privileges and services as well as social connections provided by the *conseils*.

Justice by committee, as the *conseils* did it, provided an element of efficiency because the court could often proceed even without having all of its members present. *Conseils* were often sufficiently short-handed that several substitutes were appointed to fill in, especially as the *procureurs* who entered evidence to the courts and argued before the magistrates. *Conseils* did have quorum requirements, though government correspondence regarding the appointment of conseil officials often mentions seats that had been vacant for several months or years. *Assesseeurs* were appointed to act as substitute magistrates to make up for this problem, but other offices (like *greffier*) could be left empty. Collaboration among conseil members was especially crucial as governors were often away managing colonial fortifications or traveling with a naval force to defend French interests in the region.

Court participants, whether litigants or magistrates, who entered the conseil *audience* (meeting) generally agreed to abide by the court's rules as governed by the magistrates, which embodied French jurisprudence symbolically (through the physical setting and authority of magistrates) and practically (as colonial laws were enforced and created). However, the setting of conseil deliberations in a specially designated building did not guarantee the tranquility of court proceedings. Instead, courtrooms could become sites of unscheduled confrontations among colonial residents, breaking up the orderly

process of hearings during conseil sessions.¹⁶⁷ In 1718, a Guadeloupean named La Grange was brought before a special criminal hearing by the Martinique conseil supérieur on the accusation that he had made seditious speeches against the king. Though an initial court hearing had charged him a fine of 500 livres paid to the king, he was later interrogated in prison (and likely tortured) and then brought before the special conseil session. While the conseillers interrogated him, La Grange sat on a special seat called a *sellette* for accused persons, which was understood as a place in which someone was forced to give up secrets, surrounded by conseillers and onlookers.¹⁶⁸ When the conseillers emphasized that he was “punished according to the ordinances” of French law, they linked the laws specifically to the person of La Grange as mediated through essential space of the courtroom, confirmed and witnessed by court attendees and magistrates.¹⁶⁹

La Grange’s public punishment was not confined to the Fort Royal *palais de justice*, however, but rather marked the first in a series of corrections that would acknowledge his misdeeds to an increasingly wide audience of French subjects. He was taken to a public area on the Fort Royal shoreline, where he was equipped with signs to wear on his front and back that said “seditious [person] and disturber of the public peace.” Next, he was to be beaten and flayed in public, then ensconced in the pillory for two hours in Fort Royal, then pilloried in the nearby towns of Caze Pilote (where he had

¹⁶⁷ This seems have been a problem in Saint-Domingue as well. An arrêt from Cap-Français issued in 1722 required four bailiffs to stand guard outside conseil meetings as well as Sundays and holidays, on pain of incurring a fine. Moreau de Saint-Méry, *Loix et constitutions*, Vol. 3, 1-2. 3 February 1722. I hope to analyze this and similar examples from Saint-Domingue in future versions of this project to create a more comprehensive account of colonial judicial practices.

¹⁶⁸ Entry for “sellette,” *Dictionnaire de l’Académie française*, 4th Edition (1762), 5th Edition (1798), Accessed through ARTFL, *Dictionnaires d’autrefois*, <http://artfl-project.uchicago.edu/node/17>, 7 August 2012.

¹⁶⁹ ANOM COL E 248, La Grange.

originally uttered the seditious words) and Saint-Pierre, before finally being banished in perpetuity from the French islands altogether.¹⁷⁰

The court relied upon both its own members and the members of subsidiary courts, like local jurisdictions, to accomplish this task. The judgment specified that this order would be executed under the auspices (“à la diligence”) of the substitute prosecutors general, each one in their local jurisdiction. It also required that the ruling be read, published, and affixed in all the quarters of the island under the management of the conseil’s general prosecutor, an action he would then certify to the court as soon as possible (“au premier jour”).¹⁷¹ The conseil empowered several of its members to ensure that La Grange was adequately punished by having them travel themselves to the places of punishment and report back to the conseil. Conseil magistrates also engaged the services of lower court officials to personally extend the public’s awareness of La Grange’s punishment to residents of nearby towns like Caze Pilote, pushing both personnel from and information about the conseils further and further into the small towns and rural areas of Martinique, beyond the urban center of Fort Royal, concentrated at the *palais de justice* in the center of town.

Though this example seems to match Michel Foucault’s account of public punishment in eighteenth-century France, publicity and spectacle were essential components of *all* judicial proceedings, not just executions for criminal cases and extraordinary proceedings as Foucault emphasized with examples like Damiens’s attempted assassination of Louis XV. The conseil’s response to La Grange’s sedition

¹⁷⁰ The area on the shoreline was known as “le carénage” as the part of the port where ships were careened to be cleaned and repaired. Fort Royal was one of the most important French military installations and a regional capital in the Atlantic region, so this part of the town would have been full of people at all times. The exact wording for the signs was “seditieux et perturbateur du repos public.” Ibid.

¹⁷¹ Ibid., done in the conseil 6 May 1718 and signed by Moreau.

culminated in banishment, not death, which constituted a final step in a procession to a series of public spaces increasingly removed from the center of power at the *palais de justice*, rather than a concentration of spectators, royal representatives, and convicted criminals at a single spot.¹⁷²

Though La Grange's case shows the conseil's desire to illustrate the consequences of public sedition to increasingly wider audiences of French subjects, a slightly later case shows that that conseils tied punishments for disruptions within the conseil to the space itself through more private and specific sentences. In 1724, the Martinique conseil supérieur brought criminal proceedings against André Chauton de Bordenave for having disrupted their meetings.¹⁷³ According to an extract of the judgment (*sentence criminelle*), Bordenave had "several times disturbed the meeting of the jurisdiction," entering the courtroom uninvited and launching into loud tirades. His rants included several "speeches, derisions, and injurious words" aimed at both the judges and the people who had come to watch the court's proceedings.¹⁷⁴ Bordenave reserved the biggest insults for one member of the conseil, whom he had tried to force out of the meeting.¹⁷⁵ To further alarm the conseil and its attendants, he had also entered the palais de justice armed with a rifle and bayonet after having walked the streets of Fort Royal according to his own

¹⁷² Michel Foucault, *Discipline and Punish: The Birth of the Prison*. 1st American ed. (New York: Pantheon Books, 1977). Paradoxically, many of the same jurists who handed down violent punishments for convicted criminals, especially slaves, in these colonies also advocated for ending judicial torture, a movement that was gaining traction in both the colonies and metropole in the mid-eighteenth century at precisely the moment of the Damiens affair (both before and because of it) and eventually judicial torture was abolished in 1788. For more on this latter point, see chapter three.

¹⁷³ ANOM COL E 41, André Chauton de Bordenave, arrêt rendu contre lui par le Conseil supérieur de la Martinique 1724.

¹⁷⁴ He had "plusieurs fois troublé l'audience de la juridiction insulté à justice, et aux juges par plusieurs discours, derisions et parolles injurieuses tant aus jugges qu'aux parties en presence desd. juges, et pendant les audiences, d'estre même au mepris des deffenses portés par les ordonnances." Ibid.

¹⁷⁵ The arrêt does not give the person's name and only indicates that he was a "substitut"—likely the substitute *procureur*.

testimony (*confession*) preventing the bailiffs (*huissiers*) from arresting him. Several people in attendance stopped Bordenave, recognizing his “disagreeable character” (“mauvais caractère”) and prevented him from continuing to interrupt the meeting.

Bordenave confirmed his reputation as a disagreeable and meddlesome person by repeating his antics in other conseil meetings. His actions signaled a pattern of conduct that rejected the authority of the conseil as well as the solemnity of its proceedings, while his threatening behavior both inside and outside the courtroom challenged the colonial social order the conseil (as a corporate unit of colonial government) represented and maintained through their rulings. The conseil embodied the extension of French law and judicial processes to the colonial setting of Fort Royal, in personnel and in the physical location of the palais de justice. Bordenave’s threats of violence created a challenge to this order within the Fort Royal community that erupted when he entered the conseil courtroom.

The conseillers tolerated (though by no means affirmed) Bordenave’s actions one or two times, but they responded decisively to his repeated interruptions with punishments that reset the order of conseil proceedings symbolically to reassert their power over him and (by extension) other court participants. By late 1724, the conseil issued a ruling from 6 October required Bordenave to be put back (*reintégré*) in the royal prisons of Fort Royal by the bailiff. There he was forced to wait over a month until the first day of a special convocation of the conseil known as an *audience extraordinaire* to determine his fate. This meeting was one of the extra conseil meetings that could be called by the intendant or governor under extenuating circumstances. Bordenave seems to have limited the number of cases the conseil could clear by throwing off the conseil meetings, so this special session defined the time and attention that he could claim and undermined Bordenave’s insistence on the conseil’s attention when he wanted it.

The punishment also assured that Bordenave would participate in (and thus submit to) the reassertion of the conseil's authority. By 15 November, the conseil issued a criminal sentence, outlining the punishment that they had devised for Bordenave. At the "audience extraordinaire" he would be taken into the "Chambre du Greffe" presumably in the *palais de justice* in the presence of all of the officers of that jurisdiction, where he would be required to apologize, "unprotected and on his knees" ("découvert et à genoux") and to tell the officers in a loud and intelligible voice that he had recklessly and inappropriately bothered ("que temerairement et mal à propos il a troublé") the meeting of the jurisdiction and had neglected to give justice and its judges due respect by the words he had said (as noted in the deposition he gave), and that he repents and requests forgiveness from the siège. Furthermore, he was required to give a statement (or *procès verbal*) that was recorded in the register (*greffe*) of the jurisdiction by the greffier (M. André Erard, conseiller), whom the conseil also named as commissaire for carrying out this judgment (*arrêt*). The greffier was required to report all of this back to the general prosecutor or his substitute at the next conseil meeting. The conseil sentenced Bordenave to pay three hundred livres as a fine, which would be applied to the prisons of Fort Royal.¹⁷⁶ In case of recidivism, he would be subject to corporal punishment and to pay the expenses for the criminal proceedings thereafter.

Modern readers may be tempted to interpret Bordenave's actions as the random actions of a mentally unstable person who wandered in from the street. However, the conseil chose to explain his actions as a calculated act of resistance to colonial and

¹⁷⁶ For white colonial subjects, fines were the most frequent punishment as they imposed the cost of judgment on the convicted person rather than on the colony. The judgment for more fines in the case of recidivism was meant to be a deterrent while the addition of physical punishment indicated a higher degree of infraction. For enslaved people (and to a certain extent, free people of color) who did not generate their own income, fines were an irrelevant punishment so physical retribution became the primary means of correction. For more on criminal cases and punishments in conseils supérieurs, see the case below on Jean Duren, Jean-Baptiste, and Lubin as well as chapter four.

imperial authority as well as a threat to law and order that had to be taken seriously. The case summary's inclusion of both "judges" and "justice" as targets of Chauton's rant indicates that the conseillers saw Chauton's actions as affronts to both individuals and the wider colonial judicial system that their *audience* represented. By attacking conseillers in the *palais de justice* during a session, Chauton's infraction went beyond the level of personal insult to a near-treasonous form of resistance against the conseil as a part of France's royal political body.

The requirement for Bordenave to enter the *chambre du greffe*, a more private room within the *palais de justice* and the location of the conseil's greffes, indicates the extent to which Bordenave had challenged the conseil's authority. Many early modern punishments carried an element of publicity to evoke shame for the punished and to promote good behavior by onlookers. However, Bordenave was punished only in the presence of the conseillers whom he had insulted, not by a reconstitution of the conseil meeting that he had interrupted. The punishment also contrasted with the very public performance of Bordenave's scenes in the conseil, undercutting the Bordenave's audacity by refusing to give him further access to a public venue. The conseillers further reiterated their supremacy in physical terms by forcing Bordenave to apologize on his knees and uncovered, claiming symbolically their legal authority as the guardians of colonial law enshrined in the conseil greffes, which presumably lay on a table nearby. Bordenave was further enjoined to say his confession in a "loud and intelligible voice," filling the chambre de greffe space with the admission of his guilt as compensation for his previous loud and seditious words in the conseil meeting. This created a public arena of witnesses to hear of Bordenave's guilt, but limited his confession to those conseillers whom he had directly offended. The judgment's provision for corporal punishment in case of recidivism added an element of increased publicity as a deterrent to future infractions.

Colonial justice was negotiated on two levels within the *palais de justice* that defined public and private legal space: first in the *audience*, as litigants, onlookers, and magistrates heard and entered case evidence to the court and second in the *séance*, as the conseil members worked together (or in conflict) to deliver judgments and create new legislation. The greffier's report for Bordenave's case used the terms *audience* and *séance* somewhat interchangeably to describe the conseil's sessions in the *palais de justice*, but each term signified a different kind of deliberation. Here and in other court records the term *audience* tended to connote court proceedings that included everyone in attendance—plaintiffs, bailiffs, and onlookers in addition to the conseillers themselves. *Audiences* meant conseil meetings with an element of publicity as colonial residents, including nonelite whites and possibly even free colored passersby, heard and watched the proceedings. Bordenave's interruption of the conseil *audience* was interpreted as a transgression against the orderly negotiation of justice, which allowed community members to watch and participate in court proceedings but only as long as they abided by a set of social rules that were set by the conseil magistrates.¹⁷⁷

In contrast, the term *séance* connoted the deliberations of the conseil as it met to deliver a judgment on the cases it received. During the conseil's *séances*, the conseil relied on their own knowledge of colonial law and experience in administering justice to guide their decisions, while in the *audiences*, the admission of evidence, testimony of litigants and witnesses, and informal influence of onlookers created a forum in which

¹⁷⁷ I have yet to find a good archival source that describes conseil audiences, but conseil greffes and other records imply that the majority of onlookers would have been other white elites (known as "notables") like planters and merchants. However, it seems very likely that a wider range of nonelites and probably free people of color and enslaved Africans would have been in the vicinity, as we know that different racial and economic groups tended to mix in colonial cities much more than rural areas. Bordenave's case does indicate that conseil meetings tended to have audiences that were bigger than just the plaintiffs, defendants, and witnesses directly involved in litigation. For interesting maps of the location of various professions (artisans, etc.) and statuses (free, enslaved) in Guadeloupean towns, see Pérotin-Dumon, *La ville aux Iles, la ville dans l'île*.

local ideas about justice were brought together with the expert professionals of the conseil members and the weight of precedent and legal prescription held by the greffes.¹⁷⁸ Bordenave's punishment in a special conseil *séance* signified the conseil's reassertion of authority as the governing body that held both official authority (embodied in the conseil greffes) to rule on legal matters and informal power over social relationships that Bordenave questioned in his insults to conseil members. Manipulation of the public legal space of the *audience* by Bordenave prompted conseillers to ensure the integrity of the private space of the *séance* through specific punishment limited to the audience of the conseil members (and symbolically to the law books sitting nearby).

CONSEIL GREFFES

The conseil's punishment of Bordenave in the inner sanctum of the greffe room revealed a hidden facet of France's colonial legal geography: the symbolic and practical significance of legal documents themselves as sites of legal knowledge in each colonial court setting. Conseils supérieurs kept a record of their transactions in a central location, known as the conseil greffe.¹⁷⁹ These registers also held the variety of ordinances, edicts, judgments (*arrêts*), and other royal laws that were sent to the colonies and then made active laws by their inscription into the greffes. As the case of Bordenave indicates, the buildings in which conseils met often housed a special room for the greffes (a *chambre*

¹⁷⁸ One important question that deserves more comprehensive analysis in future versions of this project is the degree to which local participants bought into the conseils as forums in which to solve community disputes, creating *demand* for legal services as a countervailing force to the *supply* of courts emanating from metropolitan capitals described here. For a more detailed discussion of the types of influence held by various court participants, see chapter four on litigation and chapter two on the *voix délibérative* as a specific right of participation held by conseil members.

¹⁷⁹ Official instructions required the conseils to do this and, in some cases, specified the form that they should take. In 1721, the original instructions to the Île de France governor Nyon included details about how the greffe should be kept, specifying that the first greffier, M. Didier, must "register day by day the deliberations of the conseil, concerning justice, police, war and commerce." They also specified that registers should be kept in duplicate by the commis greffier, Sr. Guyenes, in a separate place in case of an accident. ANOM FM F/3/210 Île de France, 11.

de greffe) and, most likely, for the greffiers themselves to work. In the Mascarenes, this function and place was known as the *inventaire du greffe*.¹⁸⁰ Council *greffes* (or registers) were often cited and quoted in other proceedings and appear in a variety of other archival collections, indicating that their judgments and the colonial laws that appeared in them were widely circulated among administrators and used as evidence in jurisdictions other than the *conseils*.¹⁸¹

Greffes provide evidence that local elites, at least, were very informed about local and imperial matters. While historians like Kenneth Banks have emphasized the degree to which France's heavily bureaucratized state failed to master its colonial domains, the centrality of the *greffes* to court proceedings across France and its overseas colonies indicates that such arguments may be overstated.¹⁸² Court records provided a repository

¹⁸⁰ See, e.g. ANOM COL E 167, Du Tillet.

¹⁸¹ The intendance as well as the admiralty offices also kept *greffes*, sources which have not been analyzed here. Registers of emancipations (*affranchissements*) appear in intendance *greffes* while admiralty (*amirauté*) courts recorded the entry and exit of enslaved people to France, which strictly regulated the migration of slaves and mixed-race people from the colonies to the metropole. Neither set of *greffes* contains the same range of material (as *conseils* often included admiralty cases and the intendant oversaw the *conseil*) nor the same archival evidence of the *conseils supérieurs*. Sue Peabody studied admiralty court records in La Rochelle for her work on this phenomenon in *"There Are No Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

¹⁸² Kenneth Banks has recently analyzed French colonial communications networks in a comparative study of Canada, Louisiana, and Martinique/Guadeloupe. He emphasizes the degree to which the modernizing, centralizing, and authoritarian state failed to master the long distances and vast spaces. Kenneth J. Banks, *Chasing Empire Across the Sea: Communications and the State in the French Atlantic, 1713-1763* (Montreal: McGill-Queen's University Press, 2006). Most historians of the French Atlantic have emphasized the degree to which overseas colonies were a low priority to the monarchy during the early modern period, in contrast especially to the attention paid by British and Spanish empires. For two articulations of this viewpoint, see Philip P. Boucher, *France and the American Tropics to 1700: Tropics of Discontent?* (Baltimore: Johns Hopkins University Press, 2008) and James S. Pritchard, *In Search of Empire: The French in the Americas, 1670-1730* (Cambridge: Cambridge University Press, 2004). However, I argue that this general ambivalence actually reflected a selective interest in colonies that appeared to be successful and profitable (e.g. Saint-Domingue, the sugar colonies of this study) over colonies that attracted more limited investment (e.g. New France). While official support for settlement efforts was often meager (Guyane and Madagascar being classic examples), archival documents reveal the intensity of colonial investment by French nobility and other elites, indicating that while official policy did not prioritize overseas colonies, many private investors did. See, e.g. the Comtesse de Coislin, who invested in Île de France in the 1770s. ANOM COL E 86, Coislin.

of information about both royal mandates (through official correspondence and edicts) as well as local applications of colonial law (through case records) that could be retrieved by people who were connected to France's overseas legal apparatus, whether they were in France or the colonies. Greffes formed crucial nodes throughout France's imperial infrastructure for learning and sharing knowledge about colonial jurisprudence.¹⁸³

Greffes were kept as manuscripts, bound together and housed in the *palais de justice* or governor's house, where they formed a central site for accessing legal knowledge in each colony.¹⁸⁴ According to the *Encyclopédie*, a greffe was a "public place where one conserved the minutes, registers, and other acts of a jurisdiction" in order to be able to access them as needed. It also referred to the place—like the *chambre de greffe* that served as a setting for the Bordenave case—for those who were in charge of guarding this collection.¹⁸⁵

Clerks, known as *greffiers*, signed for each new law and judgment as they were entered into each conseil's greffe, certifying their accuracy.¹⁸⁶ These registers contained colonial laws, including royal instructions like the Code Noir which governed slavery and

¹⁸³ Collecting and distributing information was, as many historians have noted, one of the primary challenges early modern empires faced. For an explanation of how France's late-seventeenth century finance minister (and architect of the conseil supérieur network) did it, see Jacob Soll, *The Information Master: Jean-Baptiste Colbert's Secret State Intelligence System* (Ann Arbor: University of Michigan Press, 2009). For an account that emphasizes the difficulties of this project, especially in colonial places like Martinique, see Banks, *Chasing Empire Across the Sea*.

¹⁸⁴ It is difficult, however, to know exactly what these greffes looked like during the years 1680 to 1780. The Moreau de Saint-Méry collection of legal codes (ANOM COL F/3), from which this study draws much of its material, was compiled at the end of the eighteenth century. It is composed of many separate sheets—often in different handwriting—that were bound together from an unknown collection of greffes. Based on the evidence of handwriting and other clues, Moreau de Saint-Méry (or more likely his clerks) integrated material copied from greffes with other printed laws (*arrêts*, *ordonnances*, etc.).

¹⁸⁵ "Grefe," *Encyclopédie*, Vol. 7, 920-1.

¹⁸⁶ See, for example, Du Tillet's signature on *ordonnances*, *arrêts*, and other rulings entered in the Île de France greffe in 1768 as ANOM COL F/3/210. The consistency of his signature indicates that these are original greffes, not just copies (as are some documents in the Moreau de Saint-Méry legislative collection that forms series COL F/3).

was registered in Martinique and Guadeloupe in 1685 and in the Mascarenes in 1723. Other laws were created by individual conseils in response to local circumstances. Many edicts in Martinique and Guadeloupe, for example, concerned illicit trade with neighboring islands as well as Spanish central and South America and British North America, possessed by rival empires. Île de France and Île Bourbon legislation reflected a preoccupation with environmental matters like tree-planting (to renew ebony forests) and cash, as paper money was promoted by the royal government but Spanish silver *piastres* were the favored currency for Indian Ocean trade.¹⁸⁷ All colonial officials were committed to capturing maroons, who formed tenacious (though not always longstanding) communities on all of these islands.¹⁸⁸ A third category of information was judicial rulings issued by the councils after deliberating on a specific case. These categories were collected together and all of them had similar weight as legally binding decisions that were supposed to be enforced by all colonial officials.¹⁸⁹

¹⁸⁷ Regulations regarding illicit trade are too numerous to cite here. For a survey, skim Dessalles, *Les Annales du Conseil*. For the Mascarenes, see, e.g. the collection of laws for Île de France in ANOM COL F/3/211.

¹⁸⁸ Maroons do seem to have been a more persistent phenomenon in the Mascarenes, however, given the increased attention to them given by eighteenth-century commentators and recent historians. This imbalance seems to be due to the later development of slave societies on the Mascarenes in comparison with the Antilles, which by 1750 had been employing slave labor for over a century. By this point, Antillean maroons had largely moved to less-populated islands, especially Dominica (which lies between Martinique and Guadeloupe). Frédéric Régent has compiled statistics comparing Antillean and Mascarene marronage that do show generally higher rates for the latter than for the former. For his introduction to marronage in French colonies (in both Atlantic and Indian Ocean contexts), see Frédéric Régent, *La France et ses esclaves: de la colonisation aux abolitions, 1620-1848* (Mesnil-sur-l'Estrée: Grasset, 2007), 163-76. For marronage in Île de France, see especially chapters two and three in Richard Blair Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius* (Cambridge: Cambridge University Press, 1999).

¹⁸⁹ Though this was not always the case. Local initiatives to collate and publish laws gained increasing support over the course of the eighteenth century and (like many similar projects in France) resulted in the publication of several legal codes for colonies in the Caribbean and Indian Oceans up to and after the outbreak of the French and Haitian Revolutions. The codes that were published all drew upon conseil greffes as their primary source material. I analyze these projects in chapter five.

Transmission of Greffes beyond the Conseil

Legal information from the greffes that could be disseminated in several ways, toward both local and imperial audiences. It could be copied into other collections, as in the reports to the Ministry of the Marine that became the personnel files. “Extracts” of conseil greffes were often sent to ministers in France to show how conseils had ruled on certain cases. Upon receiving these documents, royal administrators in France could tell conseillers to modify their judgments by quashing conseil rulings (*arrêts*) or returning them to the conseils. In the case of Sieur Rez discussed above, for instance, the Marine disagreed with the Guadeloupe conseil’s ruling, but sent it to a different conseil rather than issuing a new decision itself. In cases where the Marine agreed with conseil decisions, they could add extra provisions or make a ruling apply to several colonies.¹⁹⁰

The case of Joseph Hardouin Desruaux illustrates the receipt and application of greffe extracts to other cases by the Marine, outlining the pattern by which legal knowledge from the conseil could be transferred to royal administrators and then shared with a wider audience. Martinique’s conseil ruled against Desruaux in 1720 for unspecified crimes and banished him from the colonies with explicit instructions never to leave metropolitan France. If Desruaux disobeyed their orders, the magistrates would put him in the Saint-Pierre jail until they could charge him (most likely on criminal grounds) in a special conseil session, as they later did with Bordenave. By 1722, the royal administration had been made aware of this case through the conseil extracts, which were attached to a request for a royal injunction supporting the conseil’s banishment decision. The royal government granted this request and issued a blanket judgment stipulating that Desruaux would be sent back to France on the first available ship if he were to be

¹⁹⁰ For more on cases appealed to the Marine and the Marine’s responses, see chapter four.

discovered in *any* colony.¹⁹¹ This case illustrates an ongoing correspondence between conseils and the metropole, in which colonial and imperial administrators coordinated their efforts to issue and confirm judgments that applied both within a specific colonial setting (Martinique) and the wider French realm.

Conseils also used greffe extracts to prove that they had enforced laws and instructions initially given by royal ministers. Jacques Nicolas Foisy's request for employment as a conseiller in Île de France in 1786 was accompanied by a copy of his previous commission, recorded in the conseil greffe, as an *assesseur* to prove his experience and fitness for a promotion within the conseil. This document was analyzed alongside a letter from his father, a Paris lawyer (*avocat*) and other materials in a dossier that outlined his professional career both in France and in the Indian Ocean colonies.¹⁹² Foisy's case reflected the increasing desire of metropolitan administrators to stay aware of conseil rulings. By 1776, the metropolitan government required conseils to send a copy of their greffes to France to be kept in a colonial archive.¹⁹³ The maintenance of the greffes ensured that colonial courts maintained contact with royal administrators in France, keeping the disparate jurisdictions and personnel of France's overseas empire connected as a single network anchored at the royal headquarters at Versailles.

¹⁹¹ This case is a bit odd because usually people were banished *to* the colonies rather than from them. However, banishment was a popular judgment by conseils for white elite defendants throughout the colonial world as an alternative to the galleys. ANOM COL E 129, Joseph Hardouin Desruaux. This topic might form the subject of new research on forced migration among various outposts of France's empire. For the related themes of convicts and exiles in French Guyane during the revolutionary era (with particular emphasis on legal status), see the Miranda Frances Spieler, *Empire and Underworld: Captivity in French Guiana* (Cambridge, MA: Harvard University Press, 2012).

¹⁹² ANOM COL E 185, Jacques Nicolas Foisy.

¹⁹³ This requirement lasted until 1912. These greffes are now catalogued in Aix as ANOM 6 DPPC 1-3737. Criminal procedures, records regarding unclaimed possessions or those managed by trustees (e.g. estates, property held by minors), and emancipations were the most important categories of information, according to the archive headnote.

Legal information initially deposited in the greffes, especially laws, could also be printed and otherwise publicized throughout individual colonies. This task was entrusted to the *huissiers*, court employees who acted as both bailiffs and town criers. Huissiers kept law and order during court proceedings—they were the ones who chased down Bordenave on several occasions to arrest him—but they also interacted with colonial residents on a regular basis, making sure that the laws were known as well as followed. They posted printed edicts around colonial towns and told people what new laws had been received from France or issued by the conseil.¹⁹⁴ Royal instructions often urged conseillers to “have the ordinances made published and posted without delay,” so magistrates often had laws printed by official printing offices located in the colonies.¹⁹⁵

This was particularly true for ordinances regarding illicit trade and slavery, which administrators sought to control most of all. A broadside issued by the Martinique conseil in 1785 described a recent case that the court had heard on appeal from a lower jurisdiction regarding a case of theft. Jean Duren was accused of having helped two slaves, Jean-Baptise and Lubin, steal from several royal warehouses (*magasins*). The previous court had sent them all to prison (having condemned the slaves to death) where they would await the final judgment given by the conseil, which was the only colonial

¹⁹⁴ Toussaint, *Early Printing*. Huissiers seem to have overlapped in function with police and militia forces, who were overseen by the intendant and governor respectively, but they were particularly associated with courts rather than the neighborhoods or parishes patrolled by the latter. For more on the huissiers see chapter two. For more on printing, see chapter five.

¹⁹⁵ Petitjean Roget, *Le Gaoulé*, 236. In contrast to the Spanish and British colonies (which had printers from the sixteenth and seventeenth centuries, respectively), French colonies did not develop print cultures until the mid-eighteenth century. I have found evidence that Martinique’s intendant and governor requested a printing press specifically to aid in the dissemination of legal information in the 1720s, but most secondary sources attribute the beginning of printing to the 1760s, when printers did start producing local gazettes in addition to official materials. ANOM COL E 384 bis, Vaux, de. The first issue of the *Martinique Gazette* appeared in 1766, with shipping news, price indexes, and a remarkable coverage of world events. It was published by the royal printer in Saint-Pierre, Richard. *Martinique Gazette* (Saint-Pierre: Richard, 1766), ANOM BIB SOM d/RES/48. Printing in the Mascarenes began in 1767 in Île de France and 1792 in Île Bourbon. Toussaint, *Early Printing*, 121. For more on printing, see chapter five.

court to have jurisdiction over criminal cases. The conseil disagreed with the lower court's judgment and condemned the slaves to be hung publicly on the rack for an hour for three days consecutively, whipped, branded, and then returned to their masters. Duren, as a white conspirator, was likewise whipped and branded, but also forced to pay a 1,000 livre fine and serve three years on the king's galleys.¹⁹⁶

The publicity of punishments described in this broadside corresponded to the public purpose of the broadside itself: to disseminate information about conseil judgments and make the (private) records of the court, the *greffe*, known to the colonial society at large. While many colonial residents (especially the enslaved majority) were illiterate, the transference of the court's decision from the conseil's meeting room to the trees and walls upon which the broadside was published moved the discussion (in addition to the written record) about colonial law into the streets of Fort-Royal where colonial subjects could comment on and react to the court's decision.¹⁹⁷

Justice as rendered by the conseils supérieurs became a topic for discussion both within and outside the walls of the palais de justice. Legal knowledge was created in the courtroom by conseillers and litigants and maintained in the *chambre de greffe* as the greffe registers. Conseillers relied upon the greffes to help them know what laws to enforce (and how), while greffiers recorded their decisions and thereby inscribed new knowledge into the greffes following each court case. Knowledge was also circulated beyond the conseil and greffe via broadsides, town criers, and informal discussion. These

¹⁹⁶ ANOM COL F/3/265, 1 March 1785.

¹⁹⁷ By the time of the revolution, council decisions and new edicts were issued so frequently in the colonies that Île de France huissiers requested a pay raise. In September 1792, two town criers named Gosset and Fournier appealed to the local commune for extra payment as their workload had drastically increased since the revolution had started, even though the colonial assembly had not paid them. To distribute and post all of the new publications, they had even had to enlist the help of two slaves. The communal government agreed with their request and awarded them 600 livres in back payment as well as a salary of 500 livres per year. Mauritius Archives, B57, quoted in Toussaint, *Early Printing*, 83.

patterns of use indicate that the greffes were not a static form of records, entered one by one. Instead, they reflected the complicated circuits of exchange among the French subjects who litigated, ruled, researched, and were punished by the conseils. Greffes were a source and physical evidence of judicial and legislative processes.

By the end of the eighteenth century, greffes had become so significant as sites of legal knowledge that metropolitan administrators demanded copies of all conseil greffes, rather than just extracts. New laws designed to secure legal knowledge in the metropole by creating a Dépôt des Papiers Publics des Colonies in 1776 included the greffes as a repository of important legal knowledge. This new legislation required a second copy of conseil and other tribunal greffes to be sent to France for safekeeping.¹⁹⁸

CONCLUSION

France's overseas legal apparatus was anchored by the conseils supérieurs through their proceedings and records in the *palais de justice*. Conseils were established in many different colonial settings, but with the same set of officials and a mandate to rule according to French laws as issued by the king and his administrators at Versailles. This created a consistent framework for magistrates on both Atlantic and Indian Ocean islands to follow and a predictable legal system that French subjects working overseas could access, even when they were far from metropolitan courts. Similarly, the council greffes created a standardized method by which colonial administrators could collect and manage legal knowledge emanating from both metropolitan sources and local jurisprudence. These records became a source for French jurisprudence in colonies, like

¹⁹⁸ This is now catalogued in Aix as ANOM 6 DPPC 1 à 3737. These greffes appear much more straightforward than the scrapbook style of compilation in the Moreau de Saint-Méry Série F/3 because they were directly copied (usually by a single clerk) onto large sheets of high-quality paper and then bound into leather volumes.

the Antilles and Mascarenes, that lacked geographic borders with metropolitan France, but nevertheless did have French jurisdiction.

In each colony, the *palais de justice* (or other conseil meeting rooms) created physical spaces in which colonial subjects came together to work out disagreements over a range of matters through the application of laws conserved physically in the greffes. While the setting of these court meetings varied in richness—Martinique's stone structures contrasting with Île de France's wooden buildings—each palais acted as a local arena in which colonial laws could be negotiated in person. The greffes, however, linked these individual places to a wider legal geography that included both Atlantic and Indian Ocean colonies in a global judicial network, centered on the Ministry of the Marine at Versailles. Conseils themselves formed entrepôts between local elite society and the metropolitan center of colonial operations as conseil members and employees were plugged into a global colonial network that spanned the early modern French empire.

The boundaries to legal sites like courtrooms were porous as conseil magistrates and participants moved in and out of these official settings. Disruptions to court meetings, like the case of Bordenave, showed that a legal order dictated by imperial rules and practiced by local elites depended ultimately on the ability of magistrates and subjects to control the physical space in which legal negotiation occurred. As magistrates in the greffe antechamber reasserted their authority, they forced disrupters like La Grange and Bordenave to act out a peaceful and legal set of conseil behaviors that erased previous disorderly actions. These strategies attempted to correct and quash actions by colonial residents that undermined or overthrow the legal order enacted and enforced by the conseils in the space of the conseil itself. The publicity of the punishments extended this contest for authority over physical space outside into the streets and beyond. As conseil proceedings for the cases of Duren, Jean-Baptiste, and Lubin moved into the

streets of Fort Royal, both the punishment itself and the judgment (printed on a broadside) were witnessed and heard by colonial residents who had not attended this conseil hearing, expanding the reach and influence of the conseil beyond the palais de justice.

Finally, the preservation and publication of legal information by the conseils through the means of the greffes extended the conseil's authority from the courtroom into the wider colonial community by publicizing decisions (especially punishments) to create awareness about French legal processes (integrating colonies into a wider imperial system) and local jurisprudence. As colonial residents came into and out of court proceedings and as they learned about court cases, they became more and more bound into a legal geography that transcended the physical edges of individual islands and encompassed a global network of French legal knowledge.

Chapter Two

The Corporation of Courts: Conseils in Society

At the very end of the *ancien régime*, in early 1789, Julien François Guérin requested that an unnamed official in the Marine write him a letter of recommendation to exercise his professions of avocat (attorney) and greffier (clerk) in Île de France and Île Bourbon.¹⁹⁹ He explained that though he had worked in Paris for most of his career, he was a relative of the Sieur Prevost whom the Mascarene intendant Poivre had sent to Ceylon to search for spices. Guérin desired to move to the Mascarenes to contribute to his family's interests in the East Indies, though through a legal rather than commercial career. The responding marine official chose not to sign or approve Guérin's letter, but rather jotted a note in messy handwriting "to write a vague letter of recommendation."²⁰⁰ Throughout the long eighteenth century, legal professionals like Guérin sought employment in the colonial conseils supérieurs even though many of them had careers in metropolitan courts, like the Paris parlement. Through family ties, like Guérin's relationship to Prevost, and interjudicial correspondence, like Guérin's letter to the Marine, judicial personnel navigated France's global legal geography as they sought to make careers in metropolitan France, the Mascarenes, and the Antilles in the eighteenth century, from the first creation of these courts under Louis XIV to the dissolution of the *ancien régime* in late 1789, shortly after Guérin wrote his letter. Court employees like Guérin constituted France's *ancien régime* empire as they helped craft and adjudicate cases in each conseil supérieur. As they worked in each of these judicial entrepôts—from Paris to the Île de France—they contributed to the creation of a common legal culture that

¹⁹⁹ Most likely the Minister of the Marine at the time, the Comte de Luzerne.

²⁰⁰ ANOM COL E 214, Julien François Guérin.

stretched from metropolitan France to overseas territories including the Mascarenes and Antilles.

This chapter examines the personnel who ran the conseils supérieurs to uncover a remarkably consistent configuration of judicial employees who, like the conseil settings discussed in the previous chapter, were duplicated across France's *ancien régime* empire. They often corresponded with each other and the central colonial offices at Versailles, but their actions were always anchored in the conseils themselves as sites in which critical legislative and judicial decisions were made. Their networks also overlapped and intersected with elite planter and trader networks, especially as the composition of conseils increasingly favored commercial and agricultural elites over military officers over the course of the eighteenth century. However, the elite world of the conseil members was never sealed away from more middling and nonelite groups. Even within the conseils, auxiliary conseil employees like the *huissiers* (bailiffs) and complementary professionals like notaries interacted with the conseils and everyday colonial residents on a regular basis. Conseil members were the core of the conseil's personnel, but they depended upon the huissiers and notaries to collect and deliver information about their decisions and cases to the wider colonial community. This exposition of the full cast of legal personnel who participated in a choreography of justice throughout France's *ancien régime* empire sheds light on the wider ways in which conseils were embedded in and constitutive of French society. Conseils supérieurs acted as regional hubs for a range of imperial personnel who included governors and intendants, conseillers and avocats, and procureurs, huissiers, and notaries.

The background of conseil officers and related professions uncovers the experiences that guided them as they decided court cases in the conseils and the patterns in which they made, and were made by, colonial society themselves. However, conseils

were crucial not only for their own function, but because family networks latched onto them as nodes of power. Council affiliation was usually one of several roles played by colonial residents who sought to raise their economic and political status and it often became a stepping stone for local elites who aspired to higher offices in France and elsewhere. Family members often held seats for many generations and across several colonies and in different colonial councils, so councils can reveal intercolonial commercial, social, and informal legal relationships.

A study of judicial employees like Guérin reveals entire networks of elites, ranging from lawyers to planters to merchants (*négociants*). In the Antilles, conseil members relied on a tight network of creole families who backed their local experience and history on the islands with legal expertise they developed through metropolitan education. Many conseil employees had been admitted to the Paris bar and even its parlement, but chose to practice law in the colonial conseils where they could also take part in plantation agriculture and trade. In the Mascarenes, having personal connections to the islands made a big difference for metropolitan residents like Guérin who sought employment abroad. Conseils were similarly composed of a tightly interlocked elite, but commercial expertise tended to be valued over connections to prominent creole families, who were much less numerous. In both regions, legal knowledge (especially that gained in metropolitan courts) was highly valued and conserved by the clerks and lay practitioners who crafted legal documents.

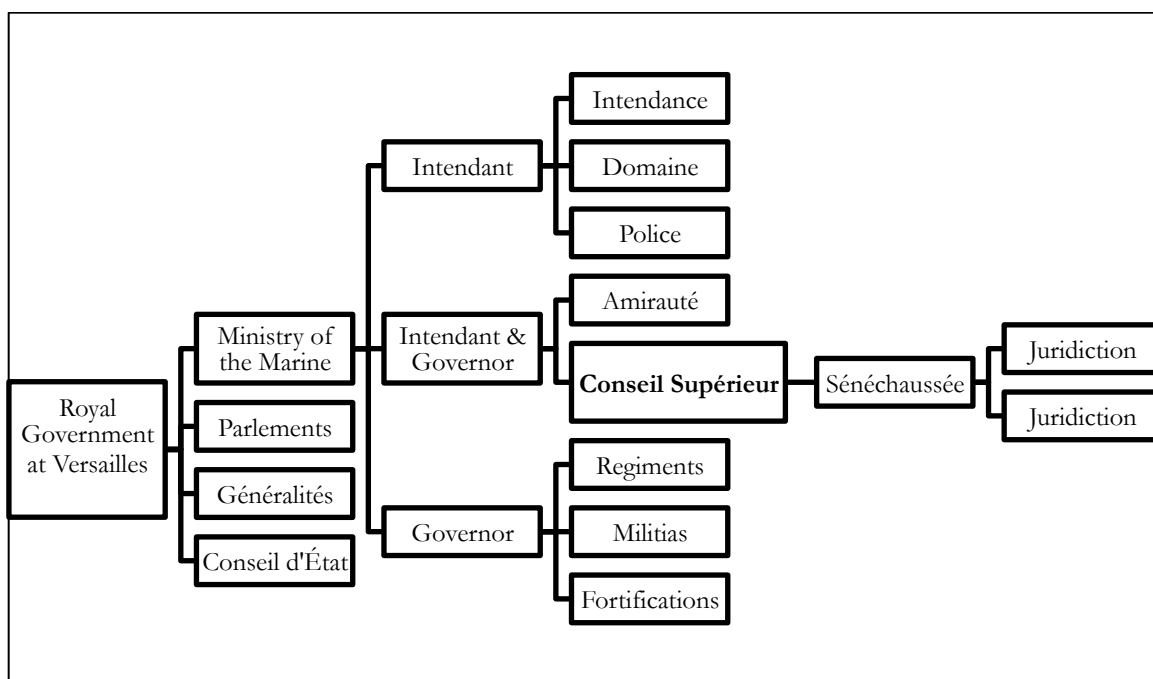


Figure 1: Simplified Chart of Judicial Apparatus

Though the individual conseil personnel varied in temperament and experience from one colony to another, they were staffed by a very similar assortment of local elites and metropolitan administrators in both the Antilles and Mascarenes. The Martinican conseil met in Fort Royal from 1678 and had a somewhat fluctuating composition, usually including around eight to a dozen members. Pierre Dessalles, writing about the history of the conseil, noted that the number of conseil members had not been well-determined in the mid-seventeenth century, but that it tended to be around eight from this period onwards.²⁰¹ By 1768, a royal edict established the Martinique conseil with a governor general and intendant presiding, four military officers, fourteen conseillers

²⁰¹ Pierre-François-Régis Dessalles, *Les Annales du Conseil Souverain de la Martinique*, T. 1, Vol. 1, 1st ed. Bergerac: J.B. Puynesge, 1786, Re-edited and reprinted by Bernard Vonglis, (Paris: L'Harmattan, 1995), 34.

(*titulaires*), one general prosecutor (*procureur général*), four substitute magistrates (*assesseurs*), and one greffier.²⁰² By 1713, it included sixteen conseillers.²⁰³ In Guadeloupe, the structure was the same.²⁰⁴ This consistent configuration made it easy for conseils to trade judicial personnel and in fact from at least 1727 Guadeloupe and Martinique had an agreement to admit each others' conseillers reciprocally as equivalent sovereign courts.²⁰⁵

Mascarene conseils followed a similar pattern, though on a smaller scale. The Île de France conseil met in Port Louis and included a similar configuration of six conseillers (only slightly smaller than Martinique's typical eight to ten), as well as the intendant, governor, general prosecutor, substitute prosecutor, four *assesseurs* and one clerk (*greffier*). Several military lieutenants also served on the conseil to act on behalf of the governor.²⁰⁶ Île Bourbon's conseil likewise the local governor or commander, six conseillers, (of whom one answered directly to the intendant), a prosecutor and substitute, four *assesseurs*, and a *greffier*. According to a 1766 arrêt, at least five conseillers had to be present to render a decision, seven if it was a criminal case.²⁰⁷ These patterns of

²⁰² The military officers were the *commandant en second*, major general (or an equivalent), a *commissaire de marine*, and the oldest *commissaire de marine*. Nicolas-Toussaint Le Moyne des Essarts, *Essai sur l'histoire générale des tribunaux des peuples tant anciens que modernes, ou Dictionnaire historique et judiciaire*, Vol. 3 (Paris: Chez l'Auteur, 1778), 140.

²⁰³ Jacques Petitjean Roget, *Le Gaoulé: La révolte de la Martinique en 1717* (Fort de France: Société d'histoire de la Martinique, 1966), 149.

²⁰⁴ Essarts, *Essai sur l'histoire générale*, 140.

²⁰⁵ ANOM COL E 66, Cazaux Du Breuil, Statement from Guadeloupe government to Marine, 5 April 1727.

²⁰⁶ The original conseil, known as a *conseil provincial*, was established to include a royal lieutenant (to take the place of Sr. Dioré if absent), a second conseiller (Sr. de Saint-Martin, also bookkeeper and general guard of the stores), third conseiller (Sr. Dugard d'Auterive, major), plus they could choose up to seven people to fill out the remainder. ANOM FM F/3/210 Île de France, 29. 31 May 1726.

²⁰⁷ Essarts, *Essai sur l'histoire générale*, 142-3. As a point of comparison, Pondichéry's conseil was created in 1701, a decade earlier the Mascarene conseils, and included seven conseillers, the same number of prosecutors, one chief greffier, and two assesseurs in addition to the usual array of governor and intendant (plus a lieutenant general).

conseil personnel match the requirements for the Antilles almost exactly, indicating that the structure of colonial justice was uniform across the Atlantic and Indian Ocean sugar islands.

Like the common configuration of the judicial setting in various *palais de justice* across French territories, in and outside of Europe, discussed in the previous chapter, this uniformity created a common array of judicial employees that became familiar to French subjects from Île de France to Martinique to Paris. Prospective conseil employees relied upon this similarity to negotiate new employment in both the colonies and the metropole. Royal administrators drew upon this common pool of personnel even as French territorial claims changed drastically over the course of the eighteenth century. Local elites increasingly used the common training of conseil officials to advocate for their own interests in language that could be understood by royal and colonial audiences.

“LES MESSIEURS”: THE GOVERNOR AND INTENDANTS

In most French colonies, two local administrators presided, co-ruling in the name of the king: the governor (or governor-general) and intendant.²⁰⁸ As the two primary colonial administrators, the governor and intendant often enacted local legislation via ordinances and direct instructions that were registered in the conseil greffes. Neither one had precedence over the other in terms of official authority. They were so closely interlinked as a team, that colonial residents often referred to them collectively as “*Les*

²⁰⁸ Some administrative regions, like the Îles du Vent (which included Martinique, Guadeloupe, and smaller dependencies like Saint Lucia) also had a governor-general who managed all of the “particular” governors for each island. The Îles du Vent governor-general was based in Fort-Royal, Martinique, with the conseil and intendance. In Louisiana, an officer called the *commissaire-ordonnateur* performed the same functions as the intendant. Khalil Saadani, “Le Gouvernement de la Louisiane Française, 1731-43: Essai d'Histoire Comparative,” *French Colonial History* 4 (2003): 120. The Spanish copied this intendant system in 1718. However, unlike French intendants, Spanish intendants had military responsibilities that included provisioning the colonies and paying troops (jobs that were done in French colonies by the governor). John Lynch, *Spanish Colonial Administration, 1782-1810: The Intendant System in the Viceroyalty of the Río De La Plata* (New York: Greenwood Press, 1969), 47-9.

Messieurs” rather than specifying one or the other. Correspondence regarding the appointment of new judges, for instance, would address them both and they would reply together.²⁰⁹ Similarly, they walked side-by-side in official processions. In conseil meetings, the governor represented the king while the intendant presided over the court’s deliberations.²¹⁰ In this respect, these officers resembled the viceroys of Spanish America, who symbolically stood in for the monarch in the colonies.²¹¹ Together, the governors and intendants oversaw the functioning of French political, military, and economic administration.

Though these administrators were tied to the conseils in their supervisory roles, their occupations were designed to ensure their loyalty to French metropolitan government rather than to the individual colonies that they oversaw. Governors and intendants were encouraged to have little local interests by certain restrictions on their investment in the colonies in contrast to the conseil magistrates who were nearly always also planters or merchants. A royal ordinance from 1758 forbid all governors, intendants, and similar personnel from acquiring plantations in the colonies.²¹² Unlike the planter and trading elite who dominated the conseils as magistrates (discussed below), governors and intendants were encouraged to stay much more directly attuned to royal interests in metropolitan France rather than local politics. In this way, the king and ministers at

²⁰⁹ E.g. letters requesting the appointment of Nicolas François Barbé de Marbois as a lieutenant judge (*lieutenant de juge*) in the Île de France jurisdiction (*siège royal*). ANOM COL E 16, Nicolas François Barbé de Marbois. See below for a fuller discussion of his case.

²¹⁰ Petitjean Roget, *Le Gaoulé*, 139. This matched the intendant’s role of being in charge of justice (in addition to police and finances). See below discussion.

²¹¹ For the symbolic and pragmatic sides of viceregal power that have many applications for the local elites analyzed here, see Alejandro Cañeque, *The King’s Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico* (New York: Routledge, 2004).

²¹² This included officials, like the *commissaires ordonnateurs*, who had roles similar to the intendants and governors. ANOM COL A 7 F° 10. Duplicated in ANOM COL A 26 F° 76, 12 May 1758.

Versailles sought to overcome, or at least mitigate, the persistent challenges of provincial resistance that been based out of the conseils' metropolitan complements, the *parlements* and estates, in the seventeenth and eighteenth centuries, though in practice this exacerbated tensions within colonial government and especially between the conseils and royal administrators.²¹³

Governors played a particularly crucial role in colonial governance, where they managed the troops who took part in the nearly constant imperial wars with which France was engaged and dealt with local militias that were nearly always headed by the same colonial elites who ran the conseils.²¹⁴ Colonies, especially the Antilles and Mascarenes, were militarized much more than metropolitan France for two reasons: first, they were garrisons for troops moving back and forth between Europe and the other main theaters of imperial warfare in the eighteenth century, especially South Asia and North America. Second, these islands were home to enslaved majorities, whom the planter elite who dominated the conseils feared for slave revolts but did not want to personally manage through militia service. Instead, they welcomed military support as an alternative to

²¹³ For more on colonial tensions, see chapter four. In fact, regional resistance from the parlements and estates in the seventeenth century, especially during the Fronde, had motivated Louis XIV to create the intendance system in the first place. For a discussion of this resistance that includes substantial detail on the metropolitan (but not colonial) intendants and also the parlements (but not the conseils), see Richard Bonney, *Society and Government in France Under Richelieu and Mazarin, 1624-61* (New York: St. Martin's Press, 1988). For these themes in regards to the provincial estates, but not the parlements or colonies, see J. Russell Major, *From Renaissance Monarchy to Absolute Monarchy: French Kings, Nobles, & Estates* (Baltimore: Johns Hopkins University Press, 1994), especially 354-5.

²¹⁴ Especially in the seventeenth century and the first half of the eighteenth century, the Antillean judicial elite was made up nearly entirely of families who had made substantial military careers as well. Founding Antillean families like Collart and Goursolas, for example pop up frequently in both militia and conseil records. ANOM COL E, database. For a survey, see especially Émile Hayot, *Les Officiers du Conseil Souverain de la Martinique et leurs Successeurs les Conseillers de la Cour d'Appel: Notices Biographiques et Généalogiques* (Fort-de-France: Annales des Antilles, 1965). This pattern existed in the Mascarenes, too, but was much less pronounced. Compare Hayot with Bernardin de Saint-Pierre's account of local militia and planter groups in Jacques-Henri Bernardin de Saint-Pierre, *Journey to Mauritius*, Translated with an introduction and notes by Jason Wilson (Oxford: Signal Books, [1773] 2002).

militia service.²¹⁵ Though conseils often sparred with governors over conflicting royal and local interests on issues like taxation, they supported the governors on these matters of defense.

Governors were likely to have served in several places throughout the French empire and their experience tended to reflect a background in engineering, construction, and other military sciences.²¹⁶ There was a pattern of connection between personnel assigned to Africa and India for those stationed in the Mascarenes via the Compagnie des Indes even before the transition to direct royal rule in 1767. Blaise Estoupan de Saint-Jean became a conseiller in Île de France after having first gone to Sénégal as a royal prosecutor and then to Pondichéry, the seat of the company's business in the East Indies and later a seat of French royal government in Asia and the Indian Ocean. His career from 1746 and 1770 followed the trajectory of French attempts to establish slave-trading entrepôts in Africa (especially in the first half of the eighteenth-century), recover South Asia in the 1760s (unsuccessfully), and finally retrench their efforts in the Mascarenes, where they invested more fully in the islands' agricultural prospects from the late 1760s.²¹⁷

Governors headed French establishments in Africa and India under the rule of royal companies in addition to colonies like the Antilles (after 1674) and the Mascarenes (after 1767) under direct royal rule. For example, Pierre Félix David rose through the ranks of the Compagnie des Indes in Senegal and other parts of West Africa and served

²¹⁵ By the 1780s, all four islands (Martinique, Guadeloupe, Île de France, Île Bourbon) discussed in this study were home to enslaved majorities of at least 80%. See chapter one, Table 1, Comparing the Indian and Atlantic Ocean Colonies. For a brief explanation of the politics of militia service and military support in France and its empire, see John D. Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (New York: Palgrave Macmillan, 2006), 31.

²¹⁶ For context here and in cases below, see especially Map 5, The Indian Ocean Region, with Mascarene Islands Inset and Map 3, The Atlantic Ocean Region.

²¹⁷ ANOM COL E 172, Blaise Estoupan de Saint Jean.

as governor of Senegal.²¹⁸ He was later the governor of both Île de France and Île de Bourbon in the Indian Ocean in a career that lasted from 1729 to 1791.²¹⁹

However, for Mascarene governors the most important job was to ensure that French interests in India and the Indian Ocean region as a whole were adequately supported. In June 1746, David left for the Mascarenes to replace the previous governor, Mahé de La Bourdonnais, and arrived in October. He arrived in Port Louis, Île de France, to find a chaotic situation. The French fleet had just been defeated in India (having besieged Madras) and had sent their shattered forces back to Île de France to recover. David managed to salvage four ships, however, and send them on home to France. This was an important, if small, victory as ships in the Indian Ocean were often beset by terrible storms and the seasonally shifting winds of the monsoon, so those damaged by warfare were at a double risk for sinking. Île de France often served as a waystation for battered ships that needed repairs as they traversed the Indian Ocean between South Asia and the Cape of Good Hope, an area which has notoriously difficult currents and was subject to frequent hurricanes. David's ability to organize and reform the ailing vessels and their crews served as a testament to his resourcefulness, a key trait for administrators far from the marine's headquarters at Versailles.

²¹⁸ The African dimensions of David's career should not be forgotten, especially as the African slave trade supplied both the Antillean and Mascarene markets for plantation labor. This facet of colonial and imperial history deserves more scholarly treatment. For an overview of French and other European incursions into West Africa, see George E. Brooks, *Eurafricans in Western Africa: Commerce, Social Status, Gender, and Religious Observance from the Sixteenth to the Eighteenth Century* (Athens: Ohio University Press, 2003). Most African slaves in the Mascarenes came from the region of Mozambique, with some South Asians and Malagasy. For a survey of slavery in the Indian Ocean, see Gwyn Campbell, *The Structure of Slavery in Indian Ocean Africa and Asia* (Portland, OR: Frank Cass, 2004).

²¹⁹ ANOM COL E 111, Pierre Félix David. Mémoire de service. It is possible that this document, as a summary of David's career, embellishes the degree to which he was the hero of these events, but the events themselves do line up with what is known via other sources about the involvement of French forces from the Mascarenes in the defense of French interests in India. The end of this report attributes French losses to the British in 1756 (at the beginning of the Seven Years' War) to a lack of preparation despite superior forces, implying that attention to David's purportedly stellar example of defense preparation might have prevented these setbacks.

Besides welcoming and restoring incoming naval units, governors were also responsible for preparing their islands for outside attack, especially in an age of constant imperial warfare. The ability to make the islands self-sufficient through engineering and construction projects and the support of imperial campaigns in India marked a successful governor in this region. Between 1747 and 1748, David remodeled the defenses of Île de France, including new batteries on both the windward and leeward sides of the island. He also reorganized naval and land forces so that the whole island could be ready to defend itself within two hours. In 1748, David sent Dupleix (the governor of French India) a squadron of six royal fighting ships with 450 men and three million livres, which Dupleix said were crucial for the defense of Pondichéry, India. David sent a second force to relieve the siege of Pondichéry in 1749, only to find that it had already ended. This massive movement of resources across the Indian Ocean left Île de France vulnerable, however, and the island was attacked by six Dutch ships. In this event, David's foresight to develop the island's batteries and militias did pay off: the Dutch forces abandoned their advance after two attempts to come near enough to fire on the islanders.

Governors, like most colonial residents, were eager to profit from local plantations and like the intendants they were instrumental in making colonial economies viable. From 1750 to 1752, David devoted his energies to more domestic matters, encouraging the new attempts to produce cash crops on the island. He supported cotton and indigo planting, as well as wheat. He bought so much wheat flour to feed the military troops that the price dropped by one quarter, prompting a growth in the production of wheat that precipitated a surplus that they then sold in Pondichéry.²²⁰

²²⁰ Apparently it took two trips to Pondichéry to get rid of the surplus. ANOM COL E 111, Pierre Félix David. This seems to have been a result of the Mascarenes' stronger need to grow their own provisions as they could not rely on nearby mainland wheat producers, though they often traded for wheat, rice, and beef on Madagascar. This is a stark contrast to the Antilles, which never (to my knowledge) grew their own wheat and were nearly always struggling with shortages rather than surpluses. The Antilles depended upon

In between his activities as a planter and military strategist, governors like David also presided over the conseil supérieur as the king's representative. He had previously served as governor and president of the council at Sénégal, so by this period he had ample experience in colonial jurisprudence as well as a commander of military troops.²²¹ David's previous role as governor under the Compagnie des Indes does seem to have made it easier for him to be promoted to another governorship under the rule of the company. He was named president of both Mascarene conseils supérieurs as part of his duties as governor general, a job given to him within his nomination for the latter title. Jean Daniel Dumas, the commander of the Mascarenes from 1766 to 1768 (with the transfer of the islands from company to direct royal control), had served in Canada during the Seven Years' War and requested a new posting in Martinique following the war, but was sent to the Mascarenes instead.²²² In fact, the loss of Canada in 1763 prompted a massive rearrangement of Marine personnel from North America to the Indian Ocean. Some, like Dumas and Antoine de Bougainville (who circumnavigated the globe in the 1760s), had second careers in the Indian Ocean that charted the change in French imperial priorities from Atlantic to Indian Ocean spheres on an individual scale.

Local colonial governors had played a similar role in Martinique under an attack in 1674, again by a Dutch force (of forty-five ships this time). Then, the Martinican

ready (though often illicit) supplies of grain from North America, which often provoked subsistence crises and local revolts. For more on provisioning crises as prompting political crises, see chapter four's discussion of uprisings in Martinique and Île de France.

²²¹ Ibid., 20 February 1742 nomination papers as governor of Sénégal and president of its conseil by the Compagnie des Indes. This is the only reference to a conseil supérieur in Africa that I have found to date. The trading center at Gorée in Africa, had a conseil de justice run by its governor, which seems to have been a more informal tribunal. ANOM COL E 31, Eustache Bignon, 1764 theft case. The Sénégal conseil was most likely similar to the one at Pondichéry, managing a small territory on a busy trading coastline (rather than a settler colony like the Antilles or Mascarenes), but further research is necessary for this topic.

²²² ANOM COL E 153, Jean Daniel Dumas. Marine reports, December 1764 and 3 October 1766. For more on Dumas, see chapter four.

governor, Monsieur de Saint-Marthe, had cooperated with the governor general, Monsieur de Baas, to rally the local militias at Fort Royal and in neighboring towns. The Dutch did make landfall in this instance and were less easily defeated. The arrival in port of a French naval ship and the heroic stand of an old Martinican colonist named Sieur d'Orange on top of the fort, however, contributed to the final defeat of the attacking force.²²³ Several other participating officers, like Valmeinières, Cornette, and Amblimont, later went on to become conseil members or governors. Here, too, the governor's attention to detail in terms of fortifications and the chain of command made a huge difference for French military forces defending seaborne attacks.²²⁴

Military officers were always members of the conseils because council rules required both military and civil administrators to be recognized, under the leadership of the governor and intendant respectively. Local police units like the *maréchaussée* have been mentioned in passing thus far, but the local colonial militias had more serious influence as governing authorities. On the conseils, the royal lieutenants (*lieutenants du roi*) most often acted as substitutes for the governor, who might be away—like David or Dumas were often—on a military mission. This emphasis on strategic defense and war created a similar rift within the conseils as the more noticeable fault lines that existed between colonial governors and intendants.²²⁵

²²³ Sieur de la Calle, *Relation du S. de la Calle: sur ce qui s'est passé a l'attaque du Fort Royal de la Martinique par la flotte de Ruiter*, Edward E. Ayer Manuscript Collection, MS 480, [1674?], Newberry Library. La Calle was himself a conseiller in Martinique's conseil. ANOM COL E 241, de La Calle.

²²⁴ This military victory was later commemorated yearly on the day of Sainte Marguerite throughout the Antillean colonies according to a Saint-Domingue conseil ruling. M. L. E. (Médéric Louis Elie) Moreau de Saint-Méry, *Loix et constitutions des colonies française de l'Amérique sous le vent*, Vol. 1 (Paris: Chez l'auteur, 1784-1790), 354.

²²⁵ For two case studies that illustrate this tension, see chapter four for the *Gaoulé* in Martinique and the Dumas affair in Île de France.

The royal lieutenants were not known for their expert judicial opinions, however, and they do not appear in court cases or greffes very often; legal codes even less so. Explaining the inclusion of both military and civil magistrates on Martinique's conseil, Pierre Dessalles opined drily that militia officers were a poor choice for conseil members because most of them could not even write.²²⁶ This may not have been entirely true—Martinican military officers tended to come from elite and even noble families. Dessalles himself married into the wealthy Guadeloupean Albis de Gissac family that included at least as many militia captains as conseillers.²²⁷ However, the tension he conveyed reveals a condescension of law school-educated magistrates like Dessalles with conseillers who had spent most of their careers designing fortifications and commanding soldiers who were almost certainly illiterate. The complaints of jurists like Dessalles pointed to differences in style of governance that bled into disagreements over who should govern, which erupted in all colonial settings.²²⁸ However, in the Antilles more than the Mascarenes, the civil and military sides of the colonial elite mentioned by Chanvalon intermarried to become a cohesive class. Membership of these councils gradually shifted in favor of prominent plantation owners and merchants over time, especially those with some background in the law. In some cases, these categories overlapped, especially as colonial elites intermarried to form multifaceted family enterprises.

Royal lieutenants and other military officers did not draft legislation, though it is likely that they suggested new ordinances—especially regarding local defenses and the

²²⁶ Dessalles, *Les Annales du Conseil*, T. 1, Vol. 1, 34.

²²⁷ For a snapshot of elite creole families that illustrates the correlation between political power and military experience during the ancien régime, see the Dessalles and Albis de Gissac family trees in the appendix of Paul Butel, *Histoire des Antilles françaises: XVIIe-XXe siècle* (Paris: Perrin, 2002), np.

²²⁸ Again, see especially the Dumas affair in chapter four.

environment.²²⁹ Similarly, the intendant's duties over police and justice constrained military officers from having much actual power in the conseils. However, military and civil sides of colonial government—especially on the conseils—worked in slightly different ways toward the same goals, though not all of them would have admitted it. Intendants and commercially-minded conseillers needed governors to ensure that ports were adequately protected from invasion and that within each colony slaves were sufficiently threatened with violence that they would not topple the plantation regime. Likewise, governors symbolically represented the authority of the king in conseil meetings and practically ensured that colonies could continue to function despite the fact that both the Antilles and Mascarenes were at the center of global imperial conflicts for this period.

In contrast to the governors' military role, intendants were royally designated magistrates sent to the provinces to make sure they complied with royal mandates in the areas of justice, police, and finance.²³⁰ In France, they presided over *généralités*, which were large administrative regions of relatively similar sizes. Their overseas jurisdiction usually included one or two colonies, which made their oversight parallel with the governors-general. The idea for intendants as direct royal agents in France's provinces had been expanded under Richelieu as a way to moderate the influence of regional governments, especially in newly integrated provinces like Bretagne and Guyenne that had well-developed representative institutions like the estates that challenged royal policies imposed from Paris. Following the Fronde of the 1650s in which such

²²⁹ The actual process of drafting and passing new laws in the conseils supérieurs is one aspect that is very difficult to assess through greffes and legal codes that only articulate the ones that were codified. For a brief survey of what is known about colonial legislation, see chapter five.

²³⁰ Des Essarts noted that usually they were picked by the *maîtres des requêtes*, but occasionally the king would also name them. Essarts, *Essai sur l'histoire générale*, 188.

institutions rebelled against the monarchy, intendants were sent to all of the metropolitan provinces.²³¹ The application of intendants to the colonies beginning in 1680 also made sense as a way of ensuring that they—though geographically distant from the metropole—had a metropolitan representative present at all times to ensure that they cooperated with imperial objectives regarding issues like commerce and taxation.

Colonial governance contrasted with metropolitan France because the fiscal and judicial functions were essentially joined in the conseil with the intendant and magistrates. In metropolitan France, the parlement and conseil jurisdictions did not match up with the boundaries for the intendancies, or *généralités*. The former determined judicial resorts and were based much more on longstanding definitions of provinces, like Bretagne and Guyenne. The jurisdiction of the Paris parlement covered most of central France, while the smaller parlements like Navarre and Pays-Bas had jurisdiction over areas in similar size to the Alsace and Roussillon conseils.²³² By contrast, the *généralités* were laid out much more uniformly across hexagonal France and were used to help levy taxes and manage matters of infrastructure, like provisioning.²³³ However, colonial possessions like Martinique and Île de France were not included among the *généralités*

²³¹ Early intendants were sent out on a case-by-case basis, often to maintain public order and to counter local corruption that hindered the collection of taxes. Bonney, *Society and Government*, 87-8, 90 and *passim*. This was accomplished by 1689. Petitjean Roget, *Le Gaoulé*, 139.

²³² See Map 2, Metropolitan French Courts.

²³³ For example, see the map of the *généralités* that was drawn up to be included with materials sent to the king on the occasion of the calling of the Estates-General in 1789. It prefigured the intensive re-drawing of France's jurisdictional boundaries that came with the revolution, including the creation of modern *départements* at the end of 1789. However, Martinique, Guadeloupe, and Île Bourbon (La Réunion) did not officially become departments until 1946. AN NN37, *La France divisée en ses généralités ou intendances et pays d'Etats avec les chefs-lieux des élections, bailliages, territoires, prévôtés, subdélégations etc. Pour être insérée dans la lettre du roi pour la convocation des Etats généraux, du 24 janvier 1789* (Paris, chez Desnos, ingénieur géographe du roi, rue Saint-Jacques, au Globe, 1789). Available online at http://www.culture.gouv.fr/Wave/image/archim/0003/dafanch01_pc45002373_2.jpg. Accessed 7 March 2013.

and were assessed for taxes primarily on the basis of import duties and slaves.²³⁴ In the colonies, intendants headed the conseils, in a blending of these two functions.

The development of an intendancy in the Antilles through colonial initiatives is one example of colonial recognition of and adaptation to metropolitan state-building processes. French administrators in the colonies knew about new models of governance that were emerging in metropolitan France like the intendancy system, so they requested to be included in these reforms when new measures were not automatically applied to them. Some, like the governor of all of the Antilles, Tracy, persistently petitioned the king's ministers for these reforms as they were being introduced in the second half of the seventeenth century. Starting in 1664, he requested an intendant for his region but was repeatedly rejected by Colbert until 1676, when the latter relented and appointed Jean-Baptiste Patoulet as Intendant of the Marine for the islands.²³⁵ Patoulet served as secretary to the Canadian intendant beginning in 1669, then was appointed as intendant of the American islands from 1679 to around 1695, when he died. This extended the state-building processes of Richelieu and Louis XIV beyond regions like Bretagne and Guyenne to newer territories overseas.

Unlike metropolitan intendants who oversaw tax districts, colonial intendants were much more closely involved with judicial matters through the conseils. In 1680, Patoulet was vested with the authority to appoint notaries, bailiffs for the conseils, greffiers for the royal jurisdictions, and instructed the conseil to verify his nominations.²³⁶

²³⁴ Much of this taxation was included in the legislation regarding trade known collectively as the *Exclusif*. For more on these taxes, see especially Jean Tarrade, *Le Commerce colonial de la France à la fin de l'ancien régime: L'évolution du régime de l'Exclusif de 1763 à 1789* (Paris: Presses Universitaires de France, 1972).

²³⁵ Thus, this administrative innovation appears to have been pushed from below, rather than above, through Colbert's reform projects: an example that points to state-building as a process that was initiated at from both the peripheries and center of France's *ancien régime* empire. Petitjean Roget, *Le Gaoulé*, 139.

²³⁶ ANOM COL A 24 F° 58, 7 June 1680.

From the earliest stages of colonization, intendants were directly involved in the constitution and function of the conseils supérieurs.

The intendants were responsible for three areas: finances, police, and justice. In contrast to the military commission of the governors, they were the representatives of civil government in the colonies and metropolitan provinces. Financial tasks included managing taxes (especially on colonial commodities like slaves and sugar) and ensuring that trading restrictions were enforced. They were also responsible for making sure that the territory under their control was adequately provisioned to ensure that colonies continued to produce high quantities of cash crops.²³⁷ This concern was a frequent cause of complaint among colonial residents, who were often too busy with cash crops to plant enough food for themselves and their slaves.²³⁸ In the Antilles, colonial residents frequently resorted to illicit trade with New England for supplies of flour and salted beef, while Mascarene residents regularly traded with Madagascar for rice and beef (both as cows and salted beef).²³⁹ The Île de France intendant, Pierre Poivre agreed to an expedition to Madagascar led by an erratic former soldier and interpreter named La

²³⁷ This was also true for intendants in France. In 1764, Monsieur de Blossac, the intendant of Poitiers, petitioned the colonial office for reimbursement for expenses he had incurred while provisioning a group of German families who were headed for the French colony of Guyane. He cited a previous grant (*gratification*) of 600 livres to the Bourges intendant and was given 400 livres. ANOM COL E 128, Desroches (file for Blossac's secretary). Indeed, bread was one of the main preoccupations of administrators in *ancien régime* France and failure to manage grain and bread could incite riots, most famously the Flour War of 1775. Steven Laurence Kaplan, *The Bakers of Paris and the Bread Question, 1700-1775* (Durham: Duke University Press, 1996).

²³⁸ The most obvious solution, of course, was to make slaves grow their own food. Labourdonnais was the first to introduce manioc from the Americas for slaves to eat. Bernardin de Saint-Pierre pointed out that it was a convenient, if unappetizing, new foodstuff: "It is a very useful plant in that it can be protected from cyclones, and ensures subsistence food for Negroes. Dogs refuse to touch it." Bernardin de Saint-Pierre, *Journey to Mauritius*, Letter 13, Port Louis, 29 May 1769, 135.

²³⁹ As well as slaves. For a more detailed account of Madagascar during this era, including extensive analysis of agricultural and commercial patterns, see Gwyn Campbell, *An Economic History of Imperial Madagascar, 1750-1895: The Rise and Fall of an Island Empire* (Cambridge: Cambridge University Press, 2005).

Bigorne in 1770 on the condition that he come back with the 300 cows (both salted beef and cows) and 150,000 pounds of white rice that traders in Madagascar owed him.²⁴⁰

Intendants often found themselves in the crosshairs of two angry groups: hungry colonists and royal administrators, the latter who were eager to receive taxes and other economic benefits of the mercantile trading system. While the Antillean colonies similarly lacked for basic foodstuffs, they could increase their reliance on the constant, but not often legal, trade with other islands as well as both the Spanish Main and English North American colonies.²⁴¹ In both cases, however, the intendants were responsible for making sure that food was supplied and also (and more generally) that French laws were followed—especially regarding trading restrictions—and that tax revenues stayed high enough to satisfy ministers in France.

In contrast with the governors, who tended to move up the military ranks, intendants were often reformers who came from a wide variety of backgrounds. They rarely came from creole families, so they were most often associated with metropolitan interests by personal inclination as well as through the design of the office. For example, colonial intendants like Chanvalon in Guyane and Poivre in Île de France invested much of their official energy into agricultural experiments designed to improve colonial production while several of them were enthusiastic and accomplished scientists in their own right.²⁴² This drive to increase colonial profits (and tax revenues) through

²⁴⁰ ANOM COL E 184, Filet, dit La Bigorne (the soldier's personnel file). La Bigorne's scheme was based on a desire to kidnap between 2,000 and 3,000 Malagasy slaves. He also started skirmishes in Madagascar among local indigenous groups that further exasperated Poivre.

²⁴¹ In fact, the refusal of local officials to trade illegally for provisions during a subsistence crisis sparked a local rebellion in Martinique in the 1717, known as *Le Gaoulé*. Similar difficulties prompted residents of the Mascarenes to "*faire le guivi*" or to run away with maroons in the seventeenth century. These patterns are both discussed in chapter four.

²⁴² Science, agriculture, and colonialism were, of course, related projects and particular foci during the second half of the eighteenth century as areas in which France could expand its economic power, especially to generate income to pay off the nation's crippling war debts. Some intendants, like Paul-Pierre Lemercier

metropolitan authority also created tension between intendants and creole planters, who believed that their prior experience as colonial magistrates and planters endowed them with a superior wisdom in running colonial government.²⁴³

As in France, individual intendants (like governors) could be less or more popular with colonial residents and often personality made a big difference.²⁴⁴ Vaucresson became intendant of the Antilles in 1704, having been nominated due to his father's connection to Richelieu, France's minister under Louis XIII, and office as an intendant in Marseille. Vaucresson created a scandal by arriving in Martinique unmarried but accompanied by a Demoiselle Curtière, who quickly established a gambling house (*académie de jeu*) in Saint-Pierre. He further infuriated local elites by purchasing a lavish plantation house on the hills above Saint-Pierre, from which he rarely came down to attend to business in town. His conduct contrasted greatly with that of his lieutenant, Pierre de Bègue, who was married to a prominent creole heiress named Marie-Elisabeth

de la Rivière (intendant of the Windward Islands in the Caribbean from 1759-1764), were directly associated with the *physiocrats*, a group that emphasized land as the source of wealth and advocated non-intervention by the government.

²⁴³ This pattern seems to match a parallel (though by no means peaceful) cession of creole power to new metropolitan intendants in Spanish America. Susan Deans-Smith has pointed out that between 1765-71 in New Spain, imperial reforms included the insertion of intendants from Spain (known as peninsulars) into the colonial administration, who often took over roles that had been formerly held by creole elites. Susan Deans-Smith, *Bureaucrats, Planters, and Workers: The Making of the Tobacco Monopoly in Bourbon Mexico* (Austin: University of Texas Press, 1992), 6. In colonial Latin America, as in the Mascarenes (but less frequently in the Antilles), *audiencia* magistrates were also often peninsulars. Lynch, *Spanish Colonial Administration*, 242. Tension between creole and peninsular elites became particularly heightened during the nineteenth century, as several Latin American colonies fought Spain for their independence. Jeremy Adelman has emphasized the legal arguments of creole elites in Argentina during this era and discovered patterns that are very similar to those in the French Antilles. Jeremy Adelman, *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford, CA: Stanford University Press, 1999).

²⁴⁴ See, for instance the statements of various provincial intendants regarding their uncertain status among provincial parlement and estates members during the 1640s in Bonney, *Society and Government*, e.g. 113, 155.

Cacqueray de Valmènières.²⁴⁵ Clashes like these fueled creole discontent with royal supervisors and encouraged creole elites like Bègue and members of the Valmènières family to argue that they had a legitimate and even natural right to rule themselves as experienced local leaders who were invested in the orderly running of the colonies.²⁴⁶

As royal representatives remained in the colonies, local elites increasingly sought to outweigh their influence through the conseils supérieurs, where they could amass power against both the intendant and governor. This pattern built on a tradition from the seventeenth century in metropolitan France in which local elites in the provinces used regional law courts and assemblies, like the parlements and estates, to counter royal initiatives, like new taxes, that were implemented by the intendants. In the middle of the seventeenth century, for example, the estates of Guyenne (the region surrounding Bordeaux) had fought with intendants and other royal officials over supremacy, as had the parlements, both before and after the Fronde of the 1640s and 1650s.²⁴⁷ This tradition culminated in the colonies with rebellions like the Gaoulé in Martinique in 1717 and the Dumas affair in Île de France in 1767, when conseils supported by local groups of notables converged against intendants and governors.²⁴⁸

However, in moments of transition and development, the intendants often worked with the conseils to reform governing institutions including the conseils. The intendants presided over each colony's conseil supérieur and acted as the conseils' chief liaison with

²⁴⁵ Petitjean Roget, *Le Gaoulé*, 141. The Cacqueray de Valmeinières family appears repeatedly in Martinique's history and in this study. They were an elite creole planter family that was well-connected to the conseil and military. They had also intermarried into several of the other elite creole planter families.

²⁴⁶ Thus plantation owners—no saints in their personal lives either—were frequently drawn to Enlightenment rhetoric that decried arbitrary and despotic rule, a line of argument that became increasingly popular over the course of the eighteenth century. For more on these ideas in the formation of colonial law, see chapter five.

²⁴⁷ Major, *From Renaissance Monarchy to Absolute Monarchy*, 302, 354-5.

²⁴⁸ For more on these incidents, see chapter four.

royal administrators in metropolitan France. In the 1670s, the Antilles underwent a rapid development into cash-crop sugar economies, so the assistance of the new intendant Patoulet in selecting notaries and other officials helped create a legal infrastructure to support new colonial and transatlantic businesses and facilitate trade. In 1767, royal administrators arrived to oversee the new direct governance of the Mascarenes and to replace the Compagnie des Indes. Led by the intendant Pierre Poivre, they reorganized and reconstituted the Île de France conseil supérieur and hired new greffiers to organize and oversee the creation of official records.

The intendance offices managed the day-to-day governmental affairs that did not involve the military and included activities that related to the conseils. The office of the intendant managed the paperwork associated with the intendant's three areas of authority: police, justice, and finances. Intendants ran the financial arm of colonial governance, which often included the management of documents like successions and estates that were funneled back to the conseils in the event of civil litigation (e.g. over inherited plantations) or judicial inquiries (e.g. in accidental deaths like the Labour case that appears in chapter three). Intendants likewise kept greffes, which recorded transactions that were specific to these areas. For example, the status of slaves was managed under a new set of legislation issued in 1777 known as the Police des Noirs.²⁴⁹ These laws were meant to manage the transit of enslaved people (especially to France) and to ensure that slave and free statuses were accurately tracked among colonial inhabitants. The intendance kept a copy of all emancipations (*affranchissements*) in its registers (*greffes*).²⁵⁰

²⁴⁹ For more on this legislation, see especially Sue Peabody, *"There Are No Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

²⁵⁰ Compare, e.g., the emancipations of Marthonne, a Martinican woman (1777), and Laurence, a woman in Île de France (1782), which were both created and kept in the islands' intendance greffes. ANOM COL E 261, Laurence. ANOM COL E 304, Marthonne.

Though colonial management was shared by two administrators who had very distinct roles, they both had responsibilities that pertained directly to the conseils. The conseils were therefore often drawn into disputes between governors and intendants, besides their own conflicts with each administrator. The roles of intendant and governor général were strictly separated, especially on matters of finance and justice, which were under the purview of the intendant alone but the governor presided over the conseils. This often led to miscommunication, when each of the two key administrators did not know what the other was doing and it specifically caused disputes over who had the right to manage conseil proceedings. Without the direct and easy intervention of metropolitan administrators to umpire internal disputes, colonial politics often devolved into chaotic turf wars. In both the Antilles and Mascarenes, the intendant and governor tended to argue with each other due to the ambiguous sharing of authority and the push and pull of local versus metropolitan loyalties. With small (and often sickly and diminishing) populations, high stress (constant imperial warfare, slave revolts, debt, threats from local and imperial subjects), and the odd set-up of a two-headed administration, the conditions were nearly always right for conflict. Intendants and governors often wrote simultaneously to ministers to complain about each other and ministers responded by begging them to work together in peace. Each administrator had offices with distinct subordinate employees, creating parallel chains of command that could become warring factions.

Governors were the most likely to abandon judicial proceedings as a strategy for solving colonial problems as they often preferred to rely on their own experience gathering troops, building forts, and organizing expeditions. They were thus more likely to abandon deliberations with intendants and conseil members in the event of emergencies and rarely hesitant to strike out on their own. Intendants, by contrast, more

often preferred to work with local elites, especially conseil members, through recognized judicial channels like conseil deliberations, which accorded with the intendants' oversight of the judicial and police matters that more directly affected local politics.

One example from Île de France highlights these contrasting strategies. When the engineer and naturalist Jacques-Henri Bernardin de Saint-Pierre arrived in late 1768, he found the island in a state of chaos because the Île de France governor Dumas and Mascarene intendant Poivre were involved in a feud so fierce it had shut down the island's government. Dumas believed that Poivre had embezzled money from the colony while Poivre had no patience for what he considered to be Dumas's incompetence.²⁵¹ Poivre was further incensed that Dumas and other colonial administrators had volunteered to go along with the adventurer La Bigorne on a wild expedition to Madagascar to kidnap 2,000 to 3,000 slaves.²⁵²

Dumas's attraction to La Bigorne's lucrative but risky proposition showed that he favored direct action instead of more indirect methods that would have drawn in the conseil as a consultative body. For governors, independent schemes like La Bigorne's seemed to offer an easy way out of colonial problems, like food shortages, that avoided time-consuming deliberations with local elites via the conseils and correspondence between metropolitan and colonial administrators to obtain official permission. La Bigorne had presented Governor Dumas with this scheme in 1767 as a way to satisfy the Mascarenes' growing labor needs as its plantation economy gained momentum. French slave traders and company representatives had also apparently gone back on their treaties with the local chiefs in Madagascar, so French visitors were unwelcome on the island. La

²⁵¹ Editor's note, Bernardin de Saint-Pierre, *Journey to Mauritius*, 241.

²⁵² This episode was part of a longstanding conflict between Dumas and the conseil during the previous year, in which Dumas had banished the court's chief prosecutor, de Ribes. For more on this part of the story, see chapter four.

Bigorne's audacious plan to kidnap the slaves thus seemed like an easy (if implausible) way out. According to a letter from Poivre, despite La Bigorne's reputation as a "dangerous adventurer," Dumas was taken by his plan and went along with it. Instead of going on the expedition as planned, however, La Bigorne left early (while Dumas was away) with his own forces and brought approximately 2,000 Malagasy slaves to Île de France where he sold them himself to pay off his extensive debts. Poivre had hoped at least to obtain rice and beef owed to the French government by Malagasy traders for provisioning troops in Île de France, but La Bigorne's fraud cut off any hope of even a small return.²⁵³

However, intendants like Poivre often rejected such plans on the grounds that adventurers like La Bigorne had shady ulterior motives and could not be counted on to deliver promised goods, so they preferred to work through more official methods like deliberations with local planters and conseillers. In contrast to Dumas, Poivre made two speeches to Île de France elites upon his arrival in 1767 in which he proposed new agricultural improvements to make the island's economy more profitable and sustainable. He first spoke to a general assembly of the island's inhabitants, including mostly planters, and then presented the same material to the conseil supérieur.²⁵⁴ Poivre sought to build a coalition of support that was centered on the conseil and expanded out into the wider

²⁵³ ANOM COL E 184 Filet, dit La Bigorne. This scenario was repeated again in 1770, this time with the approval of the new governor, Desroches. Again, Poivre claimed to have been kept uninformed and to declare that he did not think highly of the expedition. This second expedition was disastrous: La Bigorne incited a rebellion among indigenous towns in Madagascar and even prompted the return of an exiled Malagasy princess, Betti, from Île de France to fight her nephew. However, La Bigorne died in Madagascar in 1771 and the fighting ended soon after. Poivre commented afterward, that "Happily for our colony, Providence has made a dire expedition fade away" ("Heureusement pour notre colonie, la Providence a fait évanouir un projet aussi funeste").

²⁵⁴ Pierre Poivre, *Discours prononcés par M. Poivre, commissaire du Roi; l'un, à l'Assemblée générale des habitants de l'isle de France, lors de son arrivée dans la colonie; l'autre, à la première assemblée publique du Conseil supérieur, nouvellement établi dans l'isle*. (Published in London, sold in Lyon: Chez J. De Ville, & L. Rosset, libraires, rue Merciere, 1769), 15. John Carter Brown Library.

planter elite, to whom many conseillers were related, to ensure the colony's welfare. Tensions between governors and intendants revealed that though both administrators played an important role in the conseils, the intendants were far more open to working with the conseils to manage colonial affairs.

While the governors general held symbolic authority attached to the monarchy via the ministry of the marine and military power, the intendants possessed more direct powers to control colonial society via their mandate to manage police, justice, and finances. Somewhat ironically, then, the governor (as symbolic representative of the monarchy) played a more pragmatic role as the manager of military forces and fortifications, while the intendant (with a job description that would seem to involve little more than accounting and crowd control) was in a more ambiguous political position that depended upon the intendant's ability to manipulate both local and imperial power politics.

CONSEILLERS AND AVOCATS

In contrast to the governor and intendant, who represented a team of royal military and fiscal power backed by the king and sent from metropolitan France, the conseil's tribunal consisted of elites who controlled the colonial society and economy as magistrates known as conseillers. Conseil magistrates and avocats (attorneys) had metropolitan ties like the governors and intendants, but their interests were much more anchored in the colonies through interests in trade, agriculture, and the military.

Conseil magistrates were appointed in one of two ways. For councils under company rule, like the Mascarenes before 1767, conseillers were nominated by the company's board of directors.²⁵⁵ Under royal rule, conseillers were nominated by the

²⁵⁵ This was standard across all French colonies. A man named Ingrand was nominated to the Pondichéry, India conseil supérieur, for instance, by the French East India Company in 1741, granting him the privileges of *séance* and *voix délibérative*. The nomination cited royal edicts from 1664, February 1685,

conseil or the ministry of the marine and confirmed by the intendant and governor.²⁵⁶ Upon marrying the daughter of a Guadeloupean militia major, the Bordeaux parlement conseiller Jean François Cazaux Du Breuil moved to Guadeloupe and joined the Guadeloupe conseil, with full rights to “rank, hearing, and deliberative voice” granted by a royal order. However, conseils sometimes contested even this assertion of royal authority over their organizations. Cazaux Du Breuil’s appointment was met with resistance by the Guadeloupe conseil, which expressed concern that he did not spend enough time in the island to serve on the conseil (presumably as an absentee planter).²⁵⁷ Though Cazaux Du Breuil brought the requisite qualities of legal expertise and local investment backed by royal approval to the Guadeloupe conseil, conseils like the one in Guadeloupe insisted on vetting their members themselves.

Council members primarily included planters, traders (*négociants*), and military officers: the three groups of elites who were often referred to collectively as the “notables” of the islands. The conseillers could also come from legal professions, like *avocats* and *procureurs*, but most of these magistrates (like Cazaux Du Breuil) were also members of the former categories. Magistrates were always invested in the local colonial economy and society, so they acted as a counterbalance to the governors and intendants who reported directly to marine officials in Versailles. The officials who made up the colonial judiciary of the conseils supérieurs often had legal experience in metropolitan

September 1714, and May 1719 and was done in Paris and signed by four company directors. ANOM COL E 227, Ingrand.

²⁵⁶ In general, conseillers could request an open position and send the governor and intendant their qualifications along with recommendations. However, in Saint-Domingue’s southern conseil (at Léogane, Petit Goave, then finally Port-au-Prince), residents (*habitants*) of various quarters each nominated a total of nine representatives for conseil membership in January-February 1723. Médéric Moreau de Saint-Méry, *Loix et constitutions des colonies française de l’Amérique sous le vent*, Vol. 3 (Paris: Chez l’auteur, 1784-1790), 37. I have yet to find evidence for this pattern of nomination elsewhere.

²⁵⁷ ANOM COL E 66, Cazaux Du Breuil, Statement from Guadeloupe government to Marine, 5 April 1727.

courts that they drew upon when deciding cases. Many were themselves invested in colonial agriculture and commerce, owning plantations and ships, so they likewise relied upon their own financial expertise to decide how the colonies should be managed. These interests created a mixture of local interest and metropolitan thinking among the members of each conseil, who worked together—though sometimes acrimoniously—to decide cases.

Conseillers' privileges matched metropolitan magistrates' privileges. This consistency supported a global French legal culture in which officials could expect to have similar rights and responsibilities whether they adjudicated cases in Île de France, Martinique, or metropolitan France. The power vested in conseillers depended upon two defined rights known as *séance*, which was the right to sit in on conseil deliberations, and *voix délibérative*, which conferred the right to contribute an opinion to deliberations. Acting council magistrates (*conseillers*) were known as *conseillers titulaires* and adjudicated cases according to the written law in sessions convened by the corporate body of conseillers.²⁵⁸

The legal basis for adjudication matched analogous rights that were granted to conseillers in metropolitan courts, in addition to a formal grant of the right to enter the courts in the first place. For example, the Archbishop of Paris, the Chief Abbot of the Cluny Order, and the Governor of Paris, as well as the Princes of the Blood (from age fifteen) and the Peers of France (from age twenty-five) were all granted entrance to the Paris Parlement, in addition to the rights to *séance* and *voix délibérative*.²⁵⁹ Creole

²⁵⁸ For more on the distinction between *séance* and *voix délibérative*, refer to the extended discussion in chapter one.

²⁵⁹ Entrance (*entrée*) was counted as a key privilege for the metropolitan *parlements*. However, these rights were not always granted together. In France and in the colonies (e.g. below re: *honoraire* versus *titulaire* status) these rights could be tied to admittance to specific different sections of courts in France. For example, the *conseillers d'honneur* and four *maîtres des requêtes* were granted *séance* before the Parlement doyen and *voix délibérative* in the Grand-Chambre. *L'État de la France: Tome Cinquième, De*

magistrates who were born in the colonies and obtained metropolitan posts found the procedures in parlement very similar to conseil procedures. Metropolitan magistrates who took jobs in colonial conseils likewise worked through similar legal processes to what they were familiar with in France.

Once conseillers had served for many years (usually at least twenty), they could become *conseillers honoraires*, a semi-retired position that still gave magistrates influence in the outcome of cases and the courts' judicial policies.²⁶⁰ This office dated back at least to the early seventeenth-century and existed in metropolitan as well as colonial France.²⁶¹ *Conseillers honoraires* retained the right to sit in on both civil and criminal conseil proceedings, including the deliberative voice ("voix délibérative") that gave them the right to participate in the decision-making process and ceremonial processions outside the conseil. However, they lost access to tax benefits and other exemptions. They were also limited in seniority by the most oldest regular conseillers who still had all of their privileges. This position allowed experienced magistrates to retain an interest in court proceedings and politics and created a long-term continuity among the conseil's membership, as magistrates could serve for many decades even after they had officially retired.

Other privileges emphasized the conseillers' command of colonial spaces outside the *palais de justice* and reinforced imperial and local hierarchies through visual clues like the space at the front (not the back) of the church. In the late seventeenth and early

l'établissement des Parlemens, Cours Supérieurs & autres Jurisdictions du Royaume. Des Généralités, Intendances & Recettes Générales (Paris: Chez Ganeau, 1749), 5.

²⁶⁰ Sometimes regular conseillers are referred to as *conseiller titulaire* to emphasize the contrast between their role and that of the "honoraires."

²⁶¹ "Conseillers honoraires," *Encyclopédie*, Vol. 4, 29-30. Louis XIII had created this position for each *bailliage* and *siège présidial* (regional jurisdictions) in 1635 and the practice remained in place with few modifications up until the era when the *Encyclopédie* was written.

eighteenth centuries, the role of Martinican conseiller came with several privileges as well as formal legal rights, including a front row pew in their church and exemption from the head tax (*capitation*) on twelve of their slaves. Conseillers also had the right to be saluted by canon if they walked through town as a group (“se déplaçaient en corps”), and could march in front of militia officers in official cortèges.²⁶² Walking in front of militia officers, for instance, illustrated a precedence of imperial power through judicial means (personified by conseil officials) over the brute force represented by militia officials. Military force, however, also backed up conseil authority both symbolically in these processions and in reality, as militias acted as police forces to ensure the colonial social order outlined in colonial laws administered by the conseil.

The lack of monetary rewards for service on the conseil further created opportunities for creole elites to emphasize colonial justice over allegedly corrupt metropolitan justice, despite the fact that judicial services were in practice affordable to a very limited proportion of colonial subjects. For example, Martinican magistrates were forbidden to take any payments for their offices (“toute rétribution de leur charge”). Instead, the king gave them an expense account of 500 to 600 livres each year for travel to attend conseil meetings.²⁶³ This contrasted starkly with metropolitan France, where gifts and fees were regular features of the judicial process. In the Alsace conseil supérieur, for example, the amount for a case (*procès*) varied based upon the amount of work it would incur for the court staff, but tended to cost an average of between ninety and 120 livres.²⁶⁴ This was still a large amount of money as unskilled laborers in Paris,

²⁶² Petitjean Roget, *Le Gaoulé*, 147. This included the *Te Deum* ceremony discussed in more depth in chapter five.

²⁶³ Ibid., 148, citing ANOM COL C8, B3 Vaucresson, 25 January 1713. Canadian conseillers were apparently paid according to this source.

²⁶⁴ According to one study of the Alsatian conseil, these were low rates compared to other regional courts in France, like the Breton parlement at Rennes. In 1771, épices were abolished in the conseils supérieurs as

for example, only made an average of from 230 to 320 livres per year in the eighteenth century.²⁶⁵ Justice might have been cheaper in the colonies than in metropolitan France, but it was also restricted to a smaller minority of potential court users who did not include the enslaved majorities in the Antilles and Mascarenes.

In the same section where he outlined the division of government work among military and civil officials, Chanvalon explained that the conseils were meant to provide legal services—justice, in his words—to colonial residents, which would (he implied) encourage the creation of an orderly civil society:

Justice in the conseils supérieurs of our colonies is freely given to those who claim it. The officers of these conseils restrain neither place nor their work, neither gifts [*épices*], nor wages, nor recompense [*émolumens*]. However, there as elsewhere, the procedures incur considerable expenses.”²⁶⁶

Chanvalon contextualized the conseil’s judicial duties within colonial (and especially American) society as one area out of many political features of colonial governance, though one with a moral superiority based on its connection to the preservation of justice. Like the order for colonial processions, Chanvalon emphasized the role of law and order (including public safety) as a complement for military power as expressed by local troops. However, the conseil’s magnanimous dispersal of justice without any expectation for payment did form a superior kind of charity and public service. Furthermore, the conseil magistrates offered their services for the common good of the community, though

well as elsewhere, but Burckard does not reference the colonial conseils specifically. François Burckard, *Le conseil souverain d'Alsace au XVIIIe siècle, représentant du roi et défenseur de la province* (Strasbourg: Société savante d'Alsace, 1995), 155-7.

²⁶⁵ Metropolitan magistrates, at least in Paris, were not allowed to participate in commerce, especially following a 1701 edict. Richard Mowery Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994), 66, 102.

²⁶⁶ Jean-Baptiste Thibault de Chanvalon, *Voyage à la Martinique, contenant diverses Observations sur la Physique, l'Histoire Naturelle, l'Agriculture, les Mœurs, & les Usages de cette Isle, faites en 1751 & dans les années suivantes* (Paris: J. B. Bauche, 1763), 30. Hamilton College Library, Beinecke Rare Books Collection, Clinton, New York.

it was limited to those who would claim legal assistance. Those who participated in judicial arbitration via the conseils, then, counted as part of an orderly and legal community that chose discussion over arms. Chanvalon's defense of the conseillers articulated a distinct creole ideology that equated magistracy with moral virtue—a counterargument to prevailing stereotypes about the degeneracy of colonial life.²⁶⁷

In the Indian Ocean, conseillers similarly defended themselves as guardians of justice in contrast to ostensible metropolitan malpractice. In 1768, the conseiller Jean André de Ribes wrote to the minister of the Marine, the Duke of Praslin, to confirm that justice would likewise be “administered freely” by the members of the Île de France conseil supérieur without any fees (*épices*) and that the courts would not incur more expenses than absolutely necessary.²⁶⁸ Like Chanvalon, Ribes highlighted the ideal of an impartial judiciary, freed from the constraints of venality. However, Mascarene conseils did not exhibit the same kind of sustained creole rhetoric that Chanvalon epitomized in his longer argument. Though commentators like Ribes emphasized the ability of colonial jurists to follow French (and perhaps even universal) standards of impartiality and justice, they did so with a stronger emphasis on a metropolitan audience and their own experience in metropolitan courts, like the Paris Parlement, and administration.²⁶⁹ Both Antillean and Mascarene writers criticized metropolitan jurisprudence, but in a manner that supported, rather than undermined, a concept of a common legal culture by claiming

²⁶⁷ A classic account of creole arguments for autonomy, in Saint-Domingue, is Charles Frostin, *Les révoltes blanches à Saint-Domingue aux XVII^e et XVIII^e siècles*, Preface by Olivier Pétré-Grenouilleau, (Rennes: Presses Universitaires de Rennes, [1975] 2008). For a recent revisionist account that challenges Frostin's inattention to race, see John D. Garrigus, ““Le Patriotisme américain”: Emilien Petit and the Dilemma of French-Caribbean Identity Before and After the Seven Years' War,” *Proceedings of the Annual Meeting of the Western Society for French History* 30 (2002): 18-29.

²⁶⁸ ANOM COL E 119, Jean André de Ribes, 13 January 1768.

²⁶⁹ For more on this contrast, including Ribes's career as an example, see below and chapter four.

that colonial jurists understood the principles of French jurisprudence even better than jurists in France.

Mascarene conseillers made different arguments than Antillean conseillers to achieve the same ends, a pattern that emerged from contrasts in the background and experience of Mascarene conseil members. Conseillers were most often named from the merchant elite rather than from the planter class that dominated Antillean conseils. Didier de Saint-Martin, for example, became the director of commerce on Île de France in 1737, while nearly all of his sons went to work for the French East India Company (and his daughter married a company director). He also served on the Île Bourbon *conseil* starting in 1742 as one of the first council members and the island's munitions guard and then became governor of the island in 1746. Didier de Saint-Martin appears to have lacked military experience (especially in contrast to the ample military background among the Antillean elite), but he was good at managing colonial trade and had experience on the conseil by the time he became a governor. He finally returned to France in 1749, where he became a royal secretary working on finance and eventually became a syndic (manager) for the Compagnie des Indes.²⁷⁰ This was largely due to the fact that the Mascarenes were governed by companies until 1767, much later than the establishment of royal rule in the Antilles in 1674, but this pattern persisted well into the eighteenth century as the islands were chiefly important for enabling trade to south and east Asia.

However, like Chanvalon and other Antillean conseillers, Mascarene magistrates emphasized their local expertise when writing to metropolitan audiences, citing their judicial careers and involvement in colonial enterprise to recommend reforms and offer advice to the Marine. In 1787, Rheims Rose wrote a report to the minister of the marine, the Maréchal de Castries, that documented his long service to France over the previous

²⁷⁰ ANOM COL E 134, Didier de Saint-Martin.

thirty-five years as a *négociant* who traded primarily between the Mascarenes and his hometown of Saint-Mâlo.²⁷¹ Rose had previously served as a shipping manager (*subrécargue*) for the Compagnie des Indes in 1751, then as the head of Île Bourbon's Bureau of Commerce in 1768, from which point he was elevated to the position of conseiller on Île Bourbon's conseil supérieur. He was later called to serve at the Île de France conseil by the intendant of both islands, Maillart du Mesle. In return for this outstanding career, Rose requested a "cordon de Saint Michel," a royal honor that appears to have been similar to the Cross of Saint Louis obtained by French military officers for their service during the *ancien régime*. Rose's report and request reflected his confidence that the Marine would reward his loyalty and service to France's *ancien régime* empire based on the commercial and judicial equivalent of a distinguished military career.

Disagreements about this qualification illustrated differences between metropolitan and colonial priorities, in which imperial decisions indicated that metropolitan ministers believed that they benefited from, but were not dependent upon the assistance of colonial traders and magistrates. Castries rejected Rose's request for the Cordon de Saint-Michel in 1787—the same year Rose sent the request—which seems to indicate a quick decision on the part of Castries, as well as very good mail service

²⁷¹ Rose can be considered part of a wider tradition of Malouin trading and political influence in this area. Saint-Mâlo, France, was known in the sixteenth and seventeenth centuries as the birthplace of famous explorers, like Jean Cabot and Jacques Cartier, as well as the home port of many successful corsairs like René Duguay-Trouin. The governor-general of Île de France and Île Bourbon (as well as president of the conseil supérieur) Mahé de La Bourdonnais was also Malouin and married into the prosperous Malouin family of Le Brun de La Franquerie, bringing his own fortune of 300,000 livres (including *lettres de change*, gold and diamonds) to a bride who was similarly wealthy. La Bourdonnais's father-in-law had made his own fortune by delivering silver from Peru to France. However, it is useful to note that Lorient, not Saint-Mâlo, was the primary trading entrepôt between India and France via the Compagnie des Indes, for which it was established (hence the name "l'orient," or "the east"). Philippe Haudrère, Introduction to *Les Français dans l'océan Indien au XVIIIe siècle: Un mémoire inédit de La Bourdonnais, 1733 et Journal du voyage fait aux Indes sous les ordres de M. Mahé de La Bourdonnais, 1746 par M. de Rostaing*. Edited by Philippe Haudrère (Paris: Les Indes Savantes, 2004). ANOM COL E 359, Rheims Rose, Mémoire.

between metropole and colony via Rose's trading connections.²⁷² Rose was undeterred, however. He sent a new request with additional evidence in his favor, including a report showing that he had supplied the Mascarenes with over 4,000 slaves to support their growing plantation economies. In the report, he enclosed a chart of his ships' voyages around the Indian Ocean littoral that provides an excellent snapshot of the wider commercial world in which the Mascarene islands were enmeshed. The chart only covered five years of his thirty-five year career (from 1772 to 1776 inclusive), but his trading consignments included every major commercial center in the Indian Ocean region. Several ships went to Mozambique and Madagascar to buy slaves, while others traveled to China for porcelain. Rose was also savvy about profiting off of his ships: while one ship sank in a hurricane, he sold another to an *armateur* and a third to the king (presumably to the Marine). Most often, his ships went to France laden with coffee and returned to the Mascarenes via Mozambique where they picked up slaves to work on Île Bourbon and Île de France's coffee plantations. He listed nearly all of these shipping voyages as returning to Île de France with full cargoes, emphasizing the efficiency with which he traded by making sure that he had as much merchandise to sell as possible on each leg of the journey.

While Rose's requests for royal honors were rebuffed in 1787, his arguments reveal the kinds of experience and qualifications colonial elites, especially conseil members, thought would appeal most to the struggling monarchy. Rose's emphasis on his financial savvy was calculated to capture the attention of ministers who were particularly desirous of running their newly consolidated empire cheaply to make up for the huge debts incurred by a century of imperial warfare against the British. His second argument for local political expertise and a ready list of contacts with nearly all of the Mascarene

²⁷² ANOM COL E 359 Rheims Rose, Mémoire.

trading elite signaled his readiness to be what the British called “the man on the spot”—someone who understood colonial dynamics intimately and so could be entrusted to make prudent decisions without too much help from Versailles. Didier de Saint-Martin and Rheims Rose were both intensely involved in colonial trade throughout the Indian Ocean, but they also took time to administer justice in the local settings of the Île Bourbon conseil. Their expertise in the region and French commerce illustrate the dominance of a colonial merchant elite in dominating conseil membership in the Indian Ocean.

While conseillers like Chanvalon emphasized the local and communitarian aspects of conseil rule, some conseil members counted on their experience in the French metropole to help them advance in colonial offices. Avocats were one such group that stressed expertise in French law (rather than local knowledge) as the most important skill held by conseil members. Avocats, attorneys like barristers, were educated in French law schools and admitted to the bar of specific courts, usually the parlements in France.²⁷³ In the Paris parlement, for example, two avocats (*avocats généraux*) and one procureur (*procureur général*) represented the king and were referred to as a group as “the king’s men” (*les gens du roi*).²⁷⁴ Certification as an avocat conferred much prestige and implied specialized legal training and practice, so prospective employees of the conseils and other courts often made sure to mention that these credentials in their letters to the Ministry of the Marine.

In the colonies, avocats were less common but their numbers and influence increased over time. The Martinique conseil ruled in July 1769 that avocats could be integrated into the conseil (and other courts), but only once they had proven that they had

²⁷³ There was no colonial bar that I am aware of.

²⁷⁴ Roland Mousnier, *The Institutions of France Under the Absolute Monarchy, 1598-1789*, Vol. 1, translated by Brian Pearce (Chicago: University of Chicago Press, 1979), 746.

been admitted to the bar and had practiced law in the metropole for at least three years.²⁷⁵ This ruling reflected a desire to limit the number of people who could be added to the colonial courts, but also showed an increasing desire to include legal experts (as well as military officers and planters) on the colonial judiciary. A similar ruling appeared in Île de France, but not until 1781. This law allowed *avocats* to practice their profession freely (though under advisement from the conseil) in the conseil's jurisdiction (*ressort*).²⁷⁶ Conseils welcomed *avocats* for their expertise, but in both the Antilles and the Mascarenes sought to control any undue influence by defining *avocats*' power within their jurisdiction.

Metropolitan parlement *avocats* appear frequently in the Marine personnel records, pointing to a substantial group of legal personnel who held posts across France's *ancien régime* empire.²⁷⁷ Most of these records include requests for employment on the conseils. Surprisingly, several of these people asked for jobs as greffiers as well as conseillers, indicating that legal employment was more important than the particular station of magistrate and many people anticipated working their way up through the ranks of the conseil.²⁷⁸ The vast majority of these *avocats* requested employment in Saint-Domingue, the largest and wealthiest French colony during the eighteenth century. These pattern implies that most of them wanted to participate in plantation investment or the sugar and coffee trades as a more lucrative business than the practice of law in France,

²⁷⁵ Jacques Petit de Viéville, ed., *Supplément au "Code de la Martinique"* (Saint-Pierre, Martinique: P. Richard, 1772), 4 July 1769, 74. Bibliothèque Nationale de France. Paris, France. Accessed on Gallica database 1 April 2012. <http://gallica.bnf.fr/ark:/12148/bpt6k113037x/>. Also cited in Essarts, *Essai sur l'histoire générale*, 140. Des Essarts implied that the same was true for Guadeloupe, though I have been unable to confirm this yet.

²⁷⁶ ANOM FM F/3/211, Île de France, 533. 9 January 1781.

²⁷⁷ At least seventy-one personnel records mention *avocats* who were admitted to metropolitan *parlements*. ANOM COL E, database.

²⁷⁸ Based on a search for "*avocat au parlement*" in ANOM COL E, database.

but that they recognized the prestige and practical political power that came with conseil membership.²⁷⁹ However, *avocats* worked in all of the Antilles and Mascarenes, taking their metropolitan legal expertise to the *conseils supérieurs* and applying it in these local colonial contexts.

Avocats participated in the exchange and spread of French legal knowledge throughout the *ancien régime*'s global imperial network in person, moving from colony to metropole and back (for creole *avocats*) and from the capital of Paris to the colonies (for metropolitan *avocats*). Some French *avocats* requested employment in the Mascarenes as well as the Antilles, indicating that French legal professionals were well aware of both the Indian and Atlantic Ocean spheres of French colonization and the judicial *entrepôts* that existed in both places. Though both the Mascarenes and the Antilles had economies based on cash-crops like sugar and coffee, legal experts in the Mascarenes tended to come more from the area of commerce, especially spice trading, than the creole networks of military and planter families that characterized those in the Antilles. Metropolitan *avocats* saw opportunities for financial gain and status in both regions, but the patronage ties and other connections required to obtain colonial positions depended upon regional distinctives.

For families with origins in both the metropole and colonies, status as *avocat* (especially at the Paris bar) was a common prerequisite to employment on the colonial *conseils* as magistrates (but not as *avocats*). Some *avocats*, like Philippe Cornette de Cely of Martinique, were creoles who had gone to France to study law and then returned to the

²⁷⁹ Another intriguing possibility that deserves more research is the correlation between many of these requests and the early 1770s. This may be simply because most personnel records are dated between roughly 1770 and 1780. However, the early 1770s saw an upheaval in the French parlements as Chancellor Maupeou cancelled them in 1770 and they were only reconstituted in 1774. This seems to have sent many court employees scrambling for new positions. Many of them appear to have seen the colonial *conseils* as lucrative and safer alternatives. This cannot be the only explanation, however, as some requests for employment by *avocats* are spread out across the eighteenth century.

colonies to manage plantations and serve on the conseils supérieurs. Cornette de Cely was an avocat in the Paris Parlement, but he returned to Martinique to become an assesseur (substitute conseiller) in 1736 and a full-fledged conseiller in 1737, where he gained a reputation as a staunch defender of creole interests against the metropolitan viewpoint represented by the governor and intendant. He got into trouble in 1751 for trying to block the appointment of Moreau (Moreau de Saint-Méry's father) as conseiller and later incurred the disfavor of the intendant Le Mercier de la Rivière for objecting to the latter's quashing of a conseil decision.²⁸⁰ This increasingly became a tradition as other prosperous creoles (particularly in Martinique and Guadeloupe) sent their sons to be educated in French law schools with the hope of them returning to the colonies to represent creole interests and run family plantations.²⁸¹ This pattern created a cycle of exchange in which an increasingly metropolitan-educated creole elite became more strongly tied to colonial interests, but also more and more aware of political arguments within metropolitan France. A metropolitan expertise, but a creole outlook, characterized the opinions of these avocats.²⁸²

²⁸⁰ Hayot, *Conseil*, 106-7. He also appears to have worked alongside Jean Assier (a creole codifier discussed in chapter five) to promote creole interests. ANOM COL E 91, Cornette de Saint-Cyr de Cély (and Jean Assier).

²⁸¹ Pierre Dessalles and Moreau de Saint-Méry also fit into this tradition. Moreau's family differed from most, however, in that they tended to support the governor and intendant (or in Moreau de Saint-Méry's own case, the Marine Minister, Sartine) and were thus distrusted by many creole elites for being too closely aligned with the metropole. Scholars of British North American colonies have noticed a similar pattern for this period within the British empire, e.g. Julie M. Flavell, "The 'School for Modesty and Humility': Colonial American Youth in London and Their Parents, 1755-1775," *The Historical Journal* 42.2 (June 1, 1999): 377-403.

²⁸² A pattern that became particularly noticeable upon the outbreak of the French Revolution, in which political clubs (most notably the Club Massiac) emerged in the colonies to represent planter interests under a confusing rhetoric of universal rights and advocacy for slavery. For an influential analysis of the relationship between slavery and the Enlightenment, see Louis Sala-Molins, *Dark Side of the Light: Slavery and the French Enlightenment* (Minneapolis: University of Minnesota Press, 2006).

Other *avocats*, like Jean Périnelle-Dumay, started out as metropolitan *avocats* only to move to the colonies and begin a new career on the *conseils*. Périnelle-Dumay was appointed as a *conseiller* in Martinique in 1719 by the regent, the Duke of Orléans, after having served in the Paris *parlement* for several years. He later became the general prosecutor for the *conseil*. Like many creole families who created dynasties of *conseil* members, Périnelle-Dumay's son likewise served as a Paris *avocat* and later Martinican *conseiller* in the 1750s-1770s.²⁸³ This trend created a flow of legal professionals in and out of the colonies from metropolitan France and reinforced the connections among French judicial personnel throughout the empire.

This pattern was also true for the Mascarenes, where a much higher percentage of metropolitan *avocats* served on the *conseils* and a creole judicial elite was less dominant. Julien François Guérin had served as an *avocat* in Paris until 1773, from which point he had first requested employment in India. By 1775, he had arrived in Île de France because in that year his father wrote a letter to the *marine* asking them to send him back to France on a royal ship. He was the nephew of Poivre's *commissaire de la Marine*, Prevost, in Île de France, who had procured important spices "for France" at "the risk of his life and the detriment of his fortune."²⁸⁴ Guérin's request emphasized his previous familial connections—a pattern that matched the reliance on patronage common to the Antilles and French metropole at the time as well.

However, the nature of his connections was different: Guérin's relative had been involved in the spice trade, rather than any legal profession. Furthermore, the political

²⁸³ Likewise, the first Périnelle-Dumay's grandson and great-grandson were Paris *avocats*, then Martinican *conseillers*, extending the family's influence well into the nineteenth century. Hayot, *Conseil*, 200-5. ANOM COL E, 281 Jean Périnelle-Dumay (and Louis-Antoine Périnelle-Dumay).

²⁸⁴ In April 1789, the *Marine* did allow Guérin to go to Île de France to take care of the estate of his uncle. Guérin seems to have been motivated by the prospect of a great inheritance from his uncle. ANOM COL E 214, Julien François Guérin.

connection he did have, secondhand to Poivre, depended upon the commercial nature of the spice trade and Poivre's support of it rather than Poivre's function as an important imperial officer. By February, the ministry of the marine had decided against Guérin and wrote to him that they were sorry to reject his request for free passage, but could only give that to official employees of the French kingdom.²⁸⁵ Guérin's unfruitful efforts to find legal employment in the Mascarenes illustrates a lack of administrative support for sending legal experts to this region (especially as no record seems to show a replacement for Guérin) as well as enthusiasm on the part of Guérin. While marine officials declined to send Guérin in his uncle's footsteps, Guérin's request shows that Parisian *avocats* were quite aware of the judicial apparatus that lay beyond France's European borders.

Though some *avocats* were drawn to the trading world of the Indian Ocean through family ties, others sought to escape their families in France by obtaining employment in the Mascarenes. Like Guérin, Desgranges de Richeteau (and most Antillean *avocats*) had been admitted as an *avocat* to the Paris bar in the mid-eighteenth century. In Île de France, Guillaume Desgranges de Richeteau worked as both a police inspector and *avocat* for the island's conseil during the 1770s. He had practiced in the Paris parlement for over ten years (roughly 1747 to 1757), having even obtained a doctorate in law and followed his father into a career that was both lucrative and prestigious.²⁸⁶ However, he had made a bad marriage to the dismay of his family (who

²⁸⁵ Ibid.

²⁸⁶ ANOM COL E 124, Desgranges de Richeteau. Two personnel files exist for Desgranges de Richeteau, so I cite information based on which file holds the relevant evidence. The other file is ANOM COL E 124, Desgranges de richeteau [sic], Guillaume. The correspondence with the Ministry of the Marine was precipitated by the chronic illness of Desgranges's wife, who had stayed behind in Paris.

had become “irritated against [him]”), so he had decided to leave France for the colonies in search of a new career.²⁸⁷

According to his personnel files, Desgranges de Richeteau only looked to one place, Île de France, to start over. His brother, Jacques Guillaume Desgranges de Richeteau, had served in Île de France as a lieutenant in the military since the mid-eighteenth century and could offer Guillaume the recommendation necessary to obtain a judicial appointment there.²⁸⁸ Desgranges de Richeteau did receive the necessary recommendation because he arrived in Île de France by 1757 and began work as a clerk for a M. Du Petlival, with the ambition to work his way into the conseil.²⁸⁹ After several years, he obtained the attention of the governor, Magon, who gave him a job under the general prosecutor, Anthoine.²⁹⁰ By the 1760s, the new governor Desforges appreciated Desgranges de Richeteau’s work enough that he gave him the additional job of police chief, which included more compensation and also allowed him more direct legal influence over the island by enforcing the laws created and maintained by the conseil. By the 1770s, he was working as a avocat on the Île de France conseil, a job that more directly matched his previous experience at the Paris Parlement. Through family connections and legal expertise, Desgranges de Richeteau translated his prosperous Parisian career into a similarly lucrative life in the colonies.

²⁸⁷ This assertion may not be entirely truthful, as Desgranges more or less abandoned his ailing wife according to her testimony. In 1773, his wife (named Blot) wrote to the Marine minister for financial aid and noted that her husband had been living in Île de France for the last seventeen years, without giving her any help even though she suffered from ill health. Blot did receive an affectionate letter from her husband in 1772, but he only provided her a small annuity. She died in 1776, leaving outstanding loans from the Marine for Desgranges to pay back. ANOM COL E 124, Desgranges de richeteau, Guillaume, 1773.

²⁸⁸ ANOM COL E 124, Jacques Guillaume Desgranges de Richetaux.

²⁸⁹ ANOM COL E 124, Desgranges de Richeteau. In 1760, he requested a job as a greffier but was apparently denied.

²⁹⁰ Anthoine died in 1774. He likewise has two personnel records: ANOM COL E 397, Anthoine de Bacourt, Jean François; ANOM COL E 397, Anthoine de Bacourt, Jean François.

Avocats sought work in the colonial conseils for a variety of reasons. Entrance into Martinique and Guadeloupe's well-established plantocracy was more difficult, but it could guarantee good connections and possibly economic success, at least by introduction to a creole heiress if not access to plantations themselves. Like in Martinique and Guadeloupe, Guérin's attempt to work in the Indian Ocean hinged less upon his legal expertise and more upon whether or not he could convince marine employees that he had a reason to go there—especially to follow in his relative's footsteps. Similarly, Desgranges de Richeteau sought employment based upon a family connection in the Mascarenes and hoped that his brother's recommendation was sufficient to help him get away from his father and other disapproving relatives.

A growing awareness of France's overseas possessions among metropolitan legal professionals contributed to this emergence of a global class of judicial personnel. Metropolitan residents, especially in Paris, were much more aware of the Antillean colonies than the Mascarenes, particularly as Antillean creole elites increasingly sent their sons to populate many of France's law schools. There, aspirant avocats rubbed shoulders with wealthy planters and learned about the colonies as they also learned about the intricacies of French law. Indian Ocean elites, by contrast, tended to move more in commercial circles so the metropolitan sides of their networks seem to have been focused in smaller port cities like Saint-Mâlo, unless they had relatives in the military (as Desgranges de Richeteau did).²⁹¹ They also seem to have had less stake in maintaining a force of opposition on the conseil like the creole lobbying tradition epitomized by Cornette de Cely, Dessalles, and others. Ribes and other Mascarene magistrates emphasized their compliance with metropolitan norms more than their objections to

²⁹¹ Cf. note 73 on Malouin families in the Indian Ocean.

them. The link between *avocats* and colonial conseils can be tracked to both the Atlantic and Indian Ocean contexts, but it varied in intensity and motivation.

Avocats across France's colonial empire, especially in the sugar colonies of the Atlantic and Indian Oceans, formed an important part of each island's judicial elite and were engrained in key networks of familial, royal, and commercial power.²⁹² *Avocats* were embedded in family and trading networks in both the Indian and Atlantic Oceans, though most historians have emphasized the degree to which they were treated as pariahs in colonial contexts. James Pritchard has pointed out that *avocats* had terrible reputations, so they were not allowed to practice in the colonies, a factor that he says also explains why there was not a bar in the colonies.²⁹³ They were not always allowed to practice in some colonies, like Louisiana, though the Antilles and Mascarenes welcomed their presence.²⁹⁴ These sources emphasize North American colonies, like Louisiana, however, which were often neglected by metropolitan administrators in comparison with the Antilles and Mascarenes, which had smaller populations but received more attention because of their strategic and economic value. *Avocats* in strategically located insular colonies like the Antilles and Mascarenes were well-situated to help court users navigate

²⁹² Further research needs to be done on the background and role of *avocats*, particularly in the colonial setting, to better understand these factors. It is possible that some of those listed as "avocat au conseil" merely held the experience and privilege of *avocat*, rather than any function specific to the conseil, though many appear in case records, too. In general for colonial records, the term *avocat* does imply experience and knowledge of French law more than a particular vocation within the colonial context.

²⁹³ James S. Pritchard, *In Search of Empire: The French in the Americas, 1670-1730*, (New York: Cambridge University Press, 2004), 249. As the specific examples of *avocats* indicate, colonial *avocats* were most often members of the Parisian bar, thus eliminating the need for a specific colonial bar. With the imposition of royal direct rule, colonies had also come under the jurisdiction of Parisian customary law and cases could be appealed to the Paris Parlement.

²⁹⁴ In Louisiana, for example, *avocats* and a few other professions (*procureur général* and *procureur des biens vacants*) were banned because administrators wanted to counteract litigation and also prevent access to the colonies by the groups most inclined to challenge royal authority. Thus, Louisiana litigants often represented themselves in court. Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans* (Chicago: University of Chicago Press, 2008), 205.

the legal geography of France's *ancien régime* entrepôt by using the conseils as judicial entrepôts.

AUXILIARY OFFICERS

While the conseillers, governors, and intendants occupied the elite decision-making level of the colonial judicial hierarchy, the roles of lower level officers illustrate how the conseils interfaced with other layers of colonial society both within and beyond the conseil supérieur setting of the courtroom. Legal officials known as *procureurs* managed the creation of court documents like depositions and collected evidence. An auxiliary officer of the conseil, the bailiff (*huissier*), and a complementary profession, the notary (*notaire*), also deserve brief but significant discussion regarding the constitution of the conseils supérieurs, particularly because these people liaised between the conseil and the wider community of colonial residents and investors who participated in conseil cases.²⁹⁵ Some of these people often carried out several functions for the conseils and lower courts, so they were crucial for their ability to understand and accomplish day-to-day tasks that kept the courts running. Bailiffs acted as intermediaries between conseil officials and ordinary court participants, while notaries worked for colonial residents to create legal content like wills and contracts that could be contested in the conseils.

While *avocats* formed a very noticeable subgroup of conseil personnel, the complementary (but nearly unstudied) profession of *procureur* was more important in terms of the daily function of the colonial judiciary. Two kinds of *procureurs* worked on the conseils: the royal prosecutors (*procureurs du roi*) and regular *procureurs* (or solicitors). The former role required a sophisticated understanding of court procedure and French law, as the royal prosecutors acted as the key attorneys in court cases (both

²⁹⁵ A third position, that of *greffier* (scribe), is discussed below regarding both the construction and content of the conseil's *greffes* (official registers).

criminal and civil).²⁹⁶ In the colonies, they were also often known as general prosecutors (*procureurs général*) and every conseil had at least one, along with a designated substitute. Some general prosecutors were actually trained *avocats* who had attended French law schools and were admitted to the bar. François Le Sauvage was admitted as an *avocat* in the Paris parlement, but was listed as a Martinican resident (*habitant*), where he had been appointed as a substitute general prosecutor (*procuréur général*) in Martinique's conseil supérieur in 1723.²⁹⁷ General prosecutors relied upon their legal expertise to defend the interests of the state and to enforce colonial laws.

General prosecutors were also intensely involved in the messy and contested process by which conseils created, overturned, and modified colonial laws. This was primarily a local activity but it was augmented by and simultaneous with a similar process by which the Marine created imperial regulations and inspected the conseil's own legislation. These officials, individually besides as members of the conseil, juggled the instructions of metropolitan administrators (and their representatives: the governor and intendant) with local conditions regarding criminal and civil infractions. Jean André de Ribes was a conseiller for the Île de France conseil supérieur in the 1760s and 1770s and served as the court's general prosecutor for most of these decades. As the island shifted from company to royal rule in 1767-1768, Ribes wrote a detailed report to the minister of the Marine that he described as a "summary of the general affairs in which the conseil has taken part." In it, he explained that the general prosecutor was responsible for making sure that regulations were followed regarding police (i.e. general civic order), hunting, fishing, and beverages, which included wine and spirits. General prosecutors were

²⁹⁶ Mousnier, *The Institutions of France*, Vol. 1, 761.

²⁹⁷ ANOM COL A 25 F° 43v, December 1723. Royal edict creating the role of substitute procureur général and assigning Le Sauvage to that office.

expected to find and bring people to court for disobeying these laws, from which point they would most often be punished with fines.

However, Ribes was frustrated because he had not been given power to do this without any active force. Ribes needed other people to help him track down offenders and bring them into the court, a task that was too difficult for just one person. Under the previous company administration, he explained, the nonelite whites (*pions*) and slaves (*noirs*) of the local police force (*maréchaussée*) had been under the orders of the general prosecutor, where they served a similar role to the police spies of Paris.²⁹⁸ However, the new administration did not provide such assistance.²⁹⁹ He did eventually get another conseiller to help with a project to manage trade from Europe (including beverages) as he believed it necessary to make sure that prices were regulated against the arbitrariness of traders.³⁰⁰ Ribes's case illustrates the heavier responsibilities placed on general prosecutors to find and bring cases before the conseils, as well as to prosecute them in the court setting itself, a job that (unlike the role of conseiller) was a full-time position.

Regular procureurs, by contrast, acted as proxies or representatives of clients before the conseil (and other courts) but were known primarily for their procedural

²⁹⁸ Police spies were an essential part of French local government during the eighteenth century, enforcing edicts about public order and policing commodities like printed works and alcoholic beverages. Robert Darnton has made a career out of studying the Paris police records. For a recent study of Parisian police that uncovers how information was transmitted through oral networks, see Robert Darnton, *Poetry and the Police: Communication Networks in Eighteenth-Century Paris* (Cambridge: Belknap Press of Harvard University Press, 2010).

²⁹⁹ Maréchaussées were organized within France and in the colonies as local police forces who usually patrolled districts on horseback.

³⁰⁰ ANOM COL E 119, Jean André de Ribes, 13 January 1768. Ribes has two personnel files, both under the same name, Jean André de Ribes: ANOM COL E 119 and 350. Neither file makes it clear when, exactly, Ribes started serving on the conseil, though it was certainly before 1767, when the island came under royal jurisdiction because several documents refer to his career under the Compagnie des Indes. Ribes's 1768 report also implies that he was one of the conseillers enjoined to manage the transition from company to royal rule, so he most likely had extensive experience on the conseil.

knowledge rather than their expertise in the abstract principles of French law.³⁰¹ They were also much more common in the colonial conseils and other courts than *avocats* as they knew how to create and enter the basic legal documents like depositions and interrogatories. While *avocats* were virtually always associated with the highest courts in the colonies (the conseils), *procureurs* were part of the basic staff of even the most rural royal jurisdictions. The proportions of personnel files further underscore this point: 145 *avocats* are listed in the personnel records, while 301 *procureurs* had personnel files.³⁰² The exact number of these positions for each conseil varied across time for the different colonies, but one example from Martinique gives a good indication of how many full-time conseil employees there were in contrast to the dozen or so conseil members. In 1725, the Martinique conseil set the number of *procureurs* at twenty-two for the whole island, with thirty *huissiers* (not including the first *huissier* of the conseil).³⁰³ In early modern France, *procureurs* were likewise consulted much more often than *avocats*. Plaintiffs in the *sénéchaussées* of Lyon, for example, most often relied upon *procureurs* and rarely hired *avocats*.³⁰⁴ The consistency of these positions across France's *ancien régime* empire points to a remarkable standardization of legal processes and administration from Paris to the outermost reaches of French sovereignty and

³⁰¹ David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York: Oxford University Press, 1994), 38-40.

³⁰² This includes all jurisdictions (and colonies) and all types, including the general prosecutors discussed above. Out of these, 103 were general prosecutors or their substitutes. Many of the prosecutors were likely also *avocats*, but I have not cross-referenced all of these cases.

³⁰³ The ruling also established two *procureurs* and four *huissiers* for each dependent island, Grenada and Marie-Galante. These places that generally only had local courts (*juridictions royaux* and/or *sénéchaussées*). ANOM COL A 25 F° 46v, 13 July 1725. Similar evidence for the Mascarenes does not survive in this collection.

³⁰⁴ Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009), 93.

jurisdiction.³⁰⁵ As even lower-level positions like procureur were consistent across France and its overseas empire, French subjects could expect to participate in the same legal culture whether they lived in France, the Antilles, or the Mascarenes.

Huissiers, or bailiffs, helped French subjects stay informed about court decisions and legal procedures as interacted with court users and imperial subjects both within and outside of the courtroom. They assisted in keeping order during conseil proceedings and communicated legal decisions (with provisions of specific laws) to the wider community.³⁰⁶ Huissiers were a part of every colonial court from the conseils to the lowest courts of first instance, so they are mentioned in passing in many colonial documents. However, they were not involved in the activities of writing about courts or creating legal documents, so they have left a much fainter record than other court employees. Their job also had a lower status than writing-intensive jobs like greffier and instead was more similar to police jobs like sergeant. Huissiers' connection to the judicial (and thus imperial) institution of the conseils did carry a bit more authority than the police, however. Huissiers interacted with the public by spreading legal information and managing the flow of litigants, witnesses, and other people in and out of courtrooms. Huissiers were located within the legal space of the conseils, but made excursions beyond it to the wider colonial community. They were responsible for executing judicial orders and managing the various parties who came to the conseils for dispute resolution,³⁰⁷ so the huissiers worked with the conseil members, other court participants, and the general public.

³⁰⁵ Local variations, of course, bear more consideration—especially the little-known colonial settings.

³⁰⁶ Very few personnel records exist for huissiers—only 160 overall—so the individual lives of huissiers are very difficult to uncover. Most of these records are requests for employment or estate cases.

³⁰⁷ “Huissier,” *Encyclopédie*, Vol. 8, 340. The *Encyclopédie*'s definition emphasizes the bailiff's role outside the courtroom as well as in it, including enforcing judgments and publicizing laws throughout the community. Archival sources also often mention *huissiers-audienciers*, who were just bailiffs with the

In the metropole and most likely in the colonies, huissiers also acted as process servers, taking new suits issued by the general prosecutor (and other litigants) out to people, whether on their plantations or in the colonial towns.³⁰⁸ They also collected information about estates after someone had died. In succession cases, huissiers sometimes joined procureurs and notaries as the people who went out to inventory what goods the deceased left behind—especially for cases (quite common in the tropical colonies) where people died intestate. In 1769, Jean-Antoine Guichard (a huissier and royal sergeant) accompanied a notary and clerk for vacant estates to the home of Ursule, a recently deceased free woman of color in Saint Lucia (a Martinique dependency) to help with the sale of her belongings. The succession noted that Guichard and the other officials had made it widely known about the sale, making it a matter of public record both in print and spoken form.³⁰⁹ This pattern further implies that huissiers spent most of their time outside the conseil offices, traveling throughout the colonies to collect information and spread the word about conseil decisions.

When Ribes, the Île de France general prosecutor, complained that he did not have enough help to file cases and conduct investigations, he specifically mentioned local police but not the huissiers. However, the role of huissiers as public informants implies that they likely brought information back with them to the conseils. Their circuits through colonial towns and the countryside took them along similar paths to local police.

specific role of presiding over official proceedings within the courtroom (*l'audience*). “Audiercier,” *Encyclopédie*, Vol. 1, 867. This was a higher status job than a regular huissier, very similar to the higher status accorded to regular greffiers over the scribes (*commis greffiers*) who worked under them.

³⁰⁸ In Normandy, huissiers could also be process servers, a task they seem to have performed in the colonies, too. However, I have yet to find specific evidence of this. Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, NY: University of Rochester Press, 2008), 281. In Louisiana, huissiers acted as town criers and process servers. Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans* (Chicago: University of Chicago Press, 2008), 195.

³⁰⁹ ANOM COL E 382, Ursule.

Huissiers were crucial to the functioning of colonial courts because they ensured that colonial residents knew about laws and punishments and physically enforced many conseil decisions through their role as bailiffs.

All courts had bailiffs to govern the peaceful proceedings of court meetings, but bailiffs were also responsible for making sure that the general public knew about court decisions and new law that had been registered with the courts. In some cases, this role of public intermediary became a separate job. By the 1770s, for example, Île de France had one or two designated town criers (*crieurs publics*) who would go throughout the streets of Port-Louis (but not beyond) to post broadsides with new laws or rulings. They worked for the royal *siège* (or court of first instance) in Port-Louis, but reported back to the conseil supérieur greffe when they had finished their rounds to ensure that each new broadside was properly publicized.³¹⁰

Notaries did not work directly in courts in metropolitan France or the colonies, but they drafted and certified legal documents like wills and marriage contracts at the behest of clients which were often recopied into the conseil greffes as part of court proceedings. As in other civil law systems like Spain and its empire, and as Kathryn Burns has explained specifically for colonial Peru, “notaries’ workshops were the gateway through which others made their entry into the record, the courts, the archives.”³¹¹ Like the other professionals associated with the conseils, they often used

³¹⁰ Toussaint notes that copies of these broadsides were deposited with the greffes, but that they have deteriorated due to poor conservation. Auguste Toussaint, *Early Printing in the Mascarene Islands, 1767-1810* (Paris: G. Durassie et Cie, 1951). The amount of legislation and official proclamations increased rapidly during this period, as is testified by the explosion of pamphlet, broadside, and other material that has now been catalogued in French archives (especially in contrast to the paucity of material available from the *ancien régime*). While some document collections were, no doubt, destroyed out of revolutionary fervor, Île de France’s town criers noticed the increase in printing at the outset of the French Revolution. I have not found reference to “*crieurs publics*” for any other colony, but huissiers most often performed this job.

³¹¹ Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham: Duke University Press, 2010), 3. Burns also cites evidence that notarized documents were created at nearly the moment of Spanish

their positions to build up enough money to invest in colonial plantations. Some even became quite wealthy. In 1720, a Guadeloupe notary and royal surveyor named Gabriel Lambert requested and received a land concession from the governor and intendant in the eastern district of Grand Terre, on the condition that he make the land useful within six years (or it would re-enter the royal domain).³¹² Similarly, a Martinican notary named Pierre Tiphaine purchased a piece of land from a brother and sister in 1745 to become a plantation owner.³¹³ Notaries leveraged their positions as creators and guarantors of legal transactions to become wealthy and influential members of society.

Notaries were often elevated to positions within local governing organizations, especially the role of *procureur* in the conseils, which resembled the former office in its reliance on creating legal documents in accordance with imperially-designated patterns. The office of notary was often held simultaneously with other professions (besides property ownership, as indicated by Tiphaine and Lambert) in the French metropole and colonies, including those directly related to the conseil supérieur. A “young man” named Villau Des Rabines arrived in Port-Louis, Île de France in 1777 with a royal order from 1775 as well as a letter from the Île de France intendant and governor establishing him as both a notary and procureur in Île Bourbon. However, the Île Bourbon conseil objected,

arrival in the Americas as proof that “Notaries were indispensable to possession, and possession in a Roman law sense permeated Europeans’ worlds...[they] lived in intimate contact with the law of things, its distinctions, and its enforcers.” Ibid., 2. Though similar evidence of the precocity of notarial practice has not been uncovered in this process, the connection between legal documentation and possession—in this case of individual property rather than imperial sovereignty over new territories—was clearly a motivation for notaries and other legal professionals who sought both legal power and wealth. For more on notaries and notarial practices in early modern France, see Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998). For an example of research that gleans insights from notarial records from France’s early modern colonies, see Garrigus, *Before Haiti*.

³¹² ANOM COL E 251, Gabriel Lambert.

³¹³ ANOM COL E 379 bis, Pierre Tiphaine. The siblings were both minors, so the transaction was done through their father and her husband.

quoting a royal ordinance registered by its conseil on 27 July 1767 that stated that “The choice of huissiers and of notaries will belong to the intendant” or a representative on his behalf.³¹⁴ This controversy revealed the conseil’s tension with the governor intendant, but it also indicated that the conseil wanted to make sure they could govern even the auxiliary officers of the conseil.

Some notaries, like Jean Lousteau, an Île de France notary and conseil greffier, or clerk, operated their offices as a side businesses in which they created many of the documents that they would later register in the conseil while acting in their other role—as procureur or greffier.³¹⁵ Lousteau’s set of several commissions allowed for him to be a local expert on a variety of legal procedures, from wills to sales to court documents, but contrasted with the avocats’ expertise in the details of French law as practiced in the Parisian courts. However, legal practitioners like Lousteau were crucial for creating documents that would assure the stability of property, kinship ties (e.g. through marriage contracts) and other legally binding relationships on the edges of the French *ancien régime* empire as new subjects were integrated into the realm. Notaries provided legal services even in rural areas that were just being developed as plantations.³¹⁶

In both the Atlantic and Indian Oceans, notaries and huissiers accomplished very similar tasks, creating and publishing legal information for a wide variety of colonial inhabitants. These auxiliary employees of the conseils supérieurs were most invested in very local day-to-day politics, in contrast to members like avocats and governors who had stronger motivation to stay in tune with metropolitan and especially royal dictates. The

³¹⁴ ANOM COL E 387 bis, Villau des Rabines. Underlining in the letter.

³¹⁵ ANOM COL E 292, Jean Lousteau. For more on Lousteau, see below in this chapter and chapter three.

³¹⁶ As notaries were in high demand among plantation owners, many of their documents were probably deposited with the local *sièges royaux*, whose records are (like the colonial notariat in general) largely missing.

work provided by huissiers and notaries, as lower-ranking members of society than the conseillers and upper-level administrators, indicates that the conseils were meeting places for a wide range of colonial elites. These people, responsible for the day-to-day running of colonial affairs, maintained the political order established by the conseil.

While conseils supérieurs met only monthly, the *greffiers*, or clerks in charge of the greffes, presided over the day-to-day management of the conseil records. Like notaries, greffiers managed the paperwork of France's emerging overseas empire across the globe—from Sénégal to Canada to the Antilles and Mascarenes—that created legal parameters for the administration of enterprises like plantations and trading companies. They entered and signed off on court documents like depositions and also collected and organized the council greffes or registers, which contained the minutes from court cases as well as the more important official documentation of colonial edicts and other laws that governed the colonies. Greffiers, as legal clerks, also often worked as notaries and other related professions like *procureurs*. Jean Lousteau served as a royal notary and as the chief greffier for Île de France's conseil in the 1770s, where these dual offices allowed him to create and register legal documents.³¹⁷ 171 greffiers are listed individually in the personnel records between 1681 and 1789.³¹⁸ While most of them (forty-three

³¹⁷ ANOM COL E 292, Jean Lousteau. However, this dual career seems to have led him into the world of white collar crime. In the late 1770s, Lousteau was indicted on criminal charges for fraud by having created and sold false legal documents. According to Megan Vaughan, he was also particularly litigious: angering other local elites and pursuing criminal action against one of his slaves, Jouan, who had run away. Megan Vaughan, *Creating the Creole Island: Slavery in Eighteenth-Century Mauritius* (Durham: Duke University Press, 2005), 152-77 and *passim*.

³¹⁸ Out of over 19,000 personnel dossiers in ANOM Série E. Approximately 43% of these people worked in Saint-Domingue (73), 9% (15) in Martinique, 7% (12) in Guadeloupe, and 6% in the Mascarenes (11). The remainder are: **Lesser Antilles** 6% (10, including Saint Lucia, Grenada, Tobago), **French Guyane** 9% (15), **Canada** 8% (13, including Île Royale, Québec, Saint-Pierre and Miquelon), **Africa** 5% (9), **Pondichéry** 4% (7), **Louisiana** 2% (4), and **France** 2% (3). This statistic includes greffiers who were proposed for office. The percentage of greffiers in Saint-Domingue compared to other places matches the personnel collection's overall geographical breakdown, implying that the proportion of greffiers to each colony was roughly the same. A basic search for personnel records on Saint-Domingue reveals 4,888 (25.3%) records; Martinique: 2,600 (13.4%); Guadeloupe: 2,031 (10.5%); Île de France: 1,417 (7.3%); Île

percent) worked in Saint-Domingue, they were spread out across all of the Antilles and Mascarenes as well. Greffiers appear the most often in colonial records as they created or copied many the legal documents upon which this study relies.³¹⁹ Greffiers were essential for judicial units like the conseils because they kept track of court decisions, especially rulings on disputed claims like property lines and successions. They ensured that colonies had a deposit of certified legal information.

Greffiers were also held in high esteem as members of the white colonial elite, as their position included guarding and maintaining the official colonial records (greffes) rather than just creating them, as scribes or secretaries. This was a part-time position, like the office of *conseiller*, but it paid enough that the position was highly sought across the French colonial empire. In Martinique, greffiers lived in what one historian has called “a modest obscurity” but they collected at least 10,000 livres per year—more than double the salary of 4,000 livres per year claimed by a Du Tillet, an Île de France greffier (and even then, only after he won a judgment by the Île de France conseil).³²⁰ The office of greffier could bring a lucrative salary to those who could convince Marine officials to nominate them. It could also be a stepping stone for more important positions. Jean André de Ribes began his colonial career as the chief greffier in Île de France in 1754,

Bourbon, 424 (2.2%); total records: 19,352. These are records in which the colony is specified in the heading, so the numbers are actually somewhat higher. I note the numbers for Saint-Domingue to acknowledge that much more archival material is devoted to that colony, so I have left it out of this study except as a point of comparison.

³¹⁹ Thus, it might be possible to consider the work of greffiers, as much as of the notaries and related officers, as products to be contextualized and historicized themselves, especially in terms of creating and conforming to imperial norms, as Kathryn Burns has suggested for Cuzco. Kathryn Burns, “Notaries, Truth and Consequences,” *The American Historical Review* 110.2 (April 2005): 350-79. Michael Scardaville has examined the Spanish equivalent of greffiers, *escribanos*, in eighteenth-century Mexico City to understand how Spain’s “multifaceted colonial state” functioned in practice, rather than in theory. Michael C. Scardaville, “Justice by Paperwork: A Day in the Life of a Court Scribe in Bourbon Mexico City” *Journal of Social History*, 36.4 (Summer, 2003): 979-1007.

³²⁰ Petitjean Roget, *Le Gaoulé*, 145. See below for Du Tillet’s case.

then became a conseiller in 1763 and finally the conseil's general prosecutor in 1766.³²¹ The office of greffier, more than any other non-military office, was a position that granted colonial employees the possibility of upward mobility within the imperial hierarchy.

Metropolitan residents of France were surprisingly aware of vacant offices in the colonies and wrote frequently to the Marine to request commissions in the Antilles and Mascarenes. In 1770, François Auguste Ladreyt requested the job of greffier in chief for a local jurisdiction (*siège royal*) in Grand-Terre, Guadeloupe. He wrote to the minister of the marine, the Duc de Praslin, to request the title of greffier in chief as well as the privileges and wages attached to that title. In addition, he asked for payment for his passage on one of the king's vessels to Guadeloupe.³²² Ladreyt noted that the office had been vacant for several years and cited the Guadeloupe intendant, the Baron de Moissac, and a Sieur De Cassassus Du Mont as his supporters. Ladreyt had previously served as a *conseiller secret greffier* for a Saint-Prival in Vivarais, a small region between Lyon and Marseille.³²³ However, he had not been paid for this job since 1756, so he was willing to search for employment as far away as the Antilles.³²⁴ Ladreyt's awareness of this opening, presumably through patronage and kinship networks, reveals a wide range of

³²¹ ANOM COL E 119, Jean André de Ribes. For more on Ribes, see chapter five.

³²² In an era without frequent flier miles, early modern French people were nevertheless very savvy about finding travel deals. Much of the infrajustice correspondence that has been collected in the personnel records (ANOM Série E) involves requests for free passage to or from the colonies on royal ships, which the royal administration tried to limit to trips on official business. Some writers also asked the king to give them free passage due to dire circumstances (travel mishaps, poverty, etc.).

³²³ I have been unable to ascertain exactly how the role of *conseiller secret greffier* differed from other types of greffiers. Vivarais appears to be a spelling for Vivarais, which is the area around Viviers, Ardèche, on the Rhône River in France near Lyon.

³²⁴ ANOM COL E 244, François Auguste Ladreyt. Unfortunately, the personnel file does not indicate whether Ladreyt received the job. It may be possible to cross-reference him in other records but I have not yet been able to do so.

information-sharing that made possible to find out about and benefit from this employment. Ladreyt had both located and secured references in the Antilles, indicating that he had worked on his own to become a part of transatlantic communication chains.

French residents did sometimes turn down employment in the colonies as greffiers, citing the remoteness of colonies—especially in the Indian Ocean—as a downside to leaving France, especially the busy and stimulating city of Paris, from whence most conseil employees came. In 1787, a Sieur Ricatte was nominated to fill a vacant position of greffier in the Île de France sénéchaussée, but declined the offer and cited his wife and three children as the reason he did not want to leave. Instead, he suggested a peer (unnamed) of the same age, but single, and having experience as an *avocat* and the son of a secretary of state and brother of a Paris notary.³²⁵ Ricatte's decision to turn down the possibility of lucrative work in the Indian Ocean out of concern for his family matches Bernardin de Saint-Pierre's observations in 1768 that few families had migrated to the Mascarenes and the white population was mostly unmarried young men. Conseil employment (like military service) appears to have been favored by young men who saw these opportunities as a way to make their fortunes.³²⁶

Greffiers who did go to the Indian Ocean often negotiated employment within the forum of the conseil supérieur rather than via metropolitan correspondence. In the conseil reorganization of 1767, Du Tillet was given a royal appointment as greffier in chief while another man named Lousteau was hired to act as his subordinate (*commis greffier*). Du Tillet had previously made his income by organizing the conseil records and creating legal documents (presumably similar to a notary), for which he charged fees. However,

³²⁵ ANOM COL E 350, Ricatte. He requested instead to be placed at the Bureau du Contentieux in the Marine offices.

³²⁶ Bernardin de Saint-Pierre, *Journey to Mauritius*, 123, Letter 11, Port Louis. For the links between military service and social mobility in the French colonial world, see the section above.

he objected the new legal regime as they would require him to share his income with his new assistant, who would be paid entirely out of the overall greffe income.³²⁷

Conseil employees like Du Tillet and Lousteau worked out employment conflicts in the conseils.³²⁸ Rather than working this dispute out individually, it became rancorous enough that it was heard and decided as a case by the Île de France conseil supérieur, in Port-Louis.³²⁹ Du Tillet and Lousteau were both very unhappy with this arrangement. Du Tillet complained that now he did not have enough work as greffier to make a living, so he should share it with Lousteau. He also requested that the cost of drawing up sales documents would be fixed at a three or four percent fee and demanded the right to decide the commis greffier's functions and to receive the primary benefit of the payments. Lousteau responded that of the 4,000 livres that were at stake (as the overall income), he had only received a commission of thirty-two livres³³⁰ over the last two months and had sunk even lower financially after taking an official trip to France. The court ruled in Lousteau's favor in terms of payment, but left the management of the office to Du Tillet. Du Tillet could still take the 4,000 livres plus two thirds of the office's stipend (*émoluments*) while Lousteau received the latter third. The court ruled that it was not a significant enough matter to quash the ruling of the conseil, but instead that they would write to Steinhauer (the temporary governor) and Poivre to make this judgment happen.

³²⁷ ANOM COL E 167, Du Tillet. The conseil had instructed the commis greffier to make the majority (*moitié*) of expéditions (letters and other official documents) and other acts and one third of the sales (*ventes*), all other rights were given to the greffier.

³²⁸ For more on this Lousteau, see above discussion and chapter three. For more on conseil litigation, see chapter three. For a discussion of the ways in which these internal conflicts could spread to grow to have imperial dimensions, involving metropolitan relationships, see chapter four.

³²⁹ The affair was also noteworthy enough to local administrators that it also appeared in the report of the conseil's general prosecutor, Ribes, to the minister of the Marine in 1768. ANOM COL E 119, Jean André de Ribes, 13 January 1768.

³³⁰ The text says "vingt douze." Ibid.

As it turned out, Du Tillet died only two years later and was replaced by Lousteau. Conseil personnel were thus so important to the constitution of local colonial governance that their own matters became part of official conseil business.

CONCLUSION

In both Atlantic and the Indian Ocean contexts family networks created opportunities for employment in the colonies as well as metropolitan France. In the Antilles, wealthy planters like Périnelle-Dumay were increasingly influential as their families occupied conseil offices for generations, while personnel careers and connections in the Indian Ocean show slightly different patterns that depended more upon occupation than family ties. Rheims Rose's career as conseiller and trader (*négociant*) contrasted with the linear career of David (the Île de France governor), who had transitioned directly from postings in Senegal to Île de France. Instead, Rose's track record marked a more starburst-like pattern of trading interests that fanned out from a central point at Île de France. However, both Rose and David both corresponded extensively with metropolitan authorities, especially the Ministry of the Marine, through whose records pieces of their life stories survive. For Mascarene and Antillean personnel, the metropole acted as a central station of information exchange and a node of political power that connected to their smaller regional networks.

The development of families of elites who were tied to the conseils in both the Atlantic and Indian Oceans created a legal oligarchy in France's *ancien régime* empire. It was similar to the class of Parisian legal elites that Richard Mowery Andrews has called a "themistocracy."³³¹ This essentially meant that government had been outsourced from the

³³¹ Andrews, *Law, Magistracy, and Crime*. He describes "themistocrats" as "a blend, or hybrid, of disparate, even contradictory social elements within Old Regime civilization. The majority were bourgeois in social origin. By the nature of their judicial offices, they were a technically savant, vocational, and even modernistic governing class." In fact, the strengthening correlation between colonial magistrates and the Paris Parlement over the course of the eighteenth century implies that the themistocracy Andrews has

monarchy to a set of families who governed the colonies in dynastic fashion through membership on the conseils.³³² This pattern created a source of social stability by the late seventeenth century (for the Antilles) and the mid-eighteenth century (for the Mascarenes). As these families grew more intertwined and invested in legal careers in metropolitan and colonial regions of France, they became increasingly invested in the knowledge and maintenance of local laws, thorough participation in organizations like the conseils and the local assemblies. They also increasingly sought to send their sons to metropolitan laws schools to receive proper training as magistrates. The Atlantic colonies exhibited this pattern from a very early era. The Mascarenes developed a creole elite much more slowly, but which remained more entrenched in Indian Ocean trading circles than in plantation agriculture specifically. Individual magistrates such as those representing major colonial families had an important influence on the trajectory of France's overseas empire.

The day-to-day actions of colonial governance, from notaries and greffiers to intendants and governors were critical to the ways in which creole ideas were transmitted to a wider, usually Atlantic and international, community of thinkers. Some historians have tracked the influence of creole elites in the eighteenth century, particularly as the ideas of the Enlightenment and practical challenges of imperialism prompted administrators to seek economic and political reforms that would make their colonies more prosperous and stable.³³³ However, conseillers like Cornette de Cely, Chanvalon,

documented for Paris was, in fact, connected to (and perhaps even the same) as this one. For more on this pattern, see discussion throughout this chapter and examples like Jean André de Ribes in chapter four.

³³² However, the office of intendant was meant to be a countervailing metropolitan force to this local concentration of power. For more on these dynamics, see the case studies in chapter five.

³³³ Some of these works on networks of knowledge include Jorge Cañizares-Esguerra, *How to Write the History of the New World: Histories, Epistemologies, and Identities in the Eighteenth-Century Atlantic World* (Stanford, CA: Stanford University Press, 2001); Jane G. Landers, *Atlantic Creoles in the Age of Revolutions* (Cambridge, MA: Harvard University Press, 2010). Similarly, John D. Garrigus has

Desgranges de Richeteau, and Rose exhibited a knowledge of the world that stretched far beyond their island homes to the French metropole and Atlantic and Indian Ocean trading circuits. Some, like Chanvalon and Rose, sought to leverage colonial careers into imperial influence via Versailles while others, like Desgranges de Richeteau, escaped the metropole by moving to the colonies. Other conseil employees like the Île de France prosecutor Ribes were well-connected to these imperial circuits (and frequently corresponded, e.g. with the Marine), but they recognized their need for assistance from local people like *huissiers*, police, and even slaves to track down lawbreakers. In the Antilles and Mascarenes, conseil employees and associates invested heavily in the colonial economy, maneuvering income and connections they attained through local governance to establish their own wealth. The Martinican notary Tiphaine and Île de France notary Lousteau both turned their positions into prosperous side businesses that supported investment in other areas like plantations.

Though these patterns mark an increasing assertion of autonomy on the part of colonial elites and rifts between self-styled creole and metropolitan factions, an investigation of the composition of French colonial courts actually reveals a more complicated network of local elites that stretched down into the nonelite levels of society (including the slaves who helped the *huissiers*) as well as to the highest levels of royal court society at Versailles (through correspondence with Marine ministers). Intendants and governors (like Poivre and Dumas) frequently disagreed over colonial policies

emphasized the role of free people of color in the negotiation of identity in *ancien régime* Saint-Domingue. Garrigus, *Before Haiti*. Malick Ghachem's recent study of criminal law in Saint-Domingue documents the influence of colonial actors—including slaves—through conseil cases that generated an Atlantic debate about the nature of slavery. Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012). This research also integrates people of mixed-race descent as influential actors in these processes, a segment of the population that I hope to uncover in future research as they rarely appear (at least explicitly) in the archival collections consulted for this project. For more on conseil litigation, see chapter three.

enshrined in conseil rulings. General prosecutors like Ribes and even greffiers like Lousteau took other conseil employees to court, but they did, in practice, work together in the conseil setting during the entire period of the late seventeenth through late eighteenth centuries. Conseils reveal vertical networks across power asymmetries as well as horizontal (and competing) factions of those administrators aligned with colonial or metropolitan interests. These affiliations show that both sides had to (and indeed often did) work together in the setting of the conseil as they were all magistrates.³³⁴

A wide range of elites—both creole and metropolitan—came together through their association with the conseils, which were anchored very firmly in the local context of each particular colony or province, whether the more kinship-oriented plantocracy of the Antilles or the more commercially-aligned Mascarene personnel. Conseil personnel performed very similar roles whether in the Atlantic or Indian Ocean. Conseillers who were trained as *avocats* depended upon *procureurs* to create the legal documents that formed each case and notaries down the street who could create legal records for residents who often lived on plantations in the countryside, far away from the cosmopolitan world of transatlantic creole rhetoric. European legal knowledge did, however, move in the opposite direction as metropolitan-trained *avocats* returned to the colonies with ideas about governance that they had learned and practiced in law schools and (especially) the *parlement* law courts. This influence was spread (along with more

³³⁴ Though this project does not deal specifically with patron-client relationships as such, it does attempt to outline the kinds of relationships that existed among imperial employees, including those who were situated at different levels of status (and authority) within the kingdom's (*royaume's*) judicial apparatus. The classic study of early modern patronage relations, including patron-client networks, is Sharon Kettering, *Patrons, Brokers, and Clients in Seventeenth-Century France* (New York: Oxford University Press, 1986). More recently, Sara Chapman has tracked patronage networks from Paris across the Atlantic via the Ponchartrain family. Sara Chapman, "Patronage as Family Economy: The Role of Women in the Patron-Client Network of the Phélypeaux De Pontchartrain Family, 1670-1715," *French Historical Studies* 24.1 (2001): 11-35.

local ideas) through the interaction of procureurs, huissiers, and notaries to ordinary and nonelite colonial residents.

Chapter Three

The Choreography of Justice: Patterns of Judicial Negotiation

In 1725, Marianne Fontaine testified before the Île Bourbon conseil about her husband, Pitre Paul, who was accused of polygamy. She reported to the court that he had told her several times that he had other wives: one in France and another in Martinique. Paul had begun his career as a shipworker in French port cities like Bordeaux, but he eventually traversed the span of France's *ancien régime* empire, living in the Antilles and the Mascarenes as well as metropolitan France. Fontaine married Paul in the last of these places in 1721, but French court records showed that Paul had already married a woman in France in 1712. Witnesses pointed to a third woman in Martinique, with whom Paul was purported to have had an illegitimate son. As his career in ship construction took him to various parts of France's *ancien régime* empire, Paul left a trail of coworkers, spouses, and progeny.³³⁵

Paul was drawn into the central corridors that connected France and its colonies via the system of judicial entrepôts that was anchored on the conseils supérieurs even though he lived on the margins of France's empire. He was born in Flanders and never spoke French very well. He was also known to have worked from time to time for pirates. Upon being accused of polygamy, however, Paul prompted the gathering of court documents from France, Martinique, and Île Bourbon as well as testimony from French subjects in all of these places in the Île Bourbon conseil.³³⁶ Court users like Paul participated in the legal geography of France's *ancien régime* empire as they entered court proceedings in courtrooms in both metropolitan France and its overseas colonies,

³³⁵ ANOM COL E 337, Pitre Paul. Court documents in his personnel file do not always agree on whether his first name was "Pitre" or "Paul." For clarity, I have chosen to go with Pitre Paul because it is the name used the most frequently.

³³⁶ Ibid.

leaving behind evidence of their lives in conseil greffes through depositions and other legal documents.

The actions of Paul, his wives, magistrates, witnesses, and other court participants in his case comprise a snapshot of what might be called a choreography of justice, a set of steps taken by French subjects as they traveled from one legal forum to the next, whether as court administrators or users. All court participants, like dancers, made calculated decisions about how to maneuver among other participants while paying attention to changes in the music, or law, that governed them. In Paul's case, parish priests in France testified to his original marriage there to a woman named Julienne Datin and sailors averred that they, too, had known him and Datin. Marianne Fontaine used her testimony to argue for the legitimacy of her marriage to Paul in Île de France, claiming that the previous women had only been Paul's "concubines." Paul himself tried to craft a narrative that would justify his unconventional relationships to the conseil magistrates. In his interrogation, he told a meandering story about his transient past, from a childhood spent in shipyards in Norway, Spain, and Guinea to his adult life spent in the crucial sites of France, Martinique, and Île Bourbon. Paul never denied the charge of polygamy outright, but rather sought to connect the places he had visited into a linear (if not exactly logical) explanation of his string of relationships that declared them to be legitimate and legal.³³⁷

Outlining a choreography of justice reveals that court users drew on ideas about civil society, like the illegality of polygamy, that were common in France and its colonies as they mobilized local evidence and witnesses to support their cases in the conseils, whether they lived in France, the Antilles, or the Mascarenes. They also used their awareness of a wider French legal culture to pursue hearings in other judicial forums like

³³⁷ Ibid.

royal courts of appeal in France. As court users sought judicial audiences in disparate parts of France's empire and court administrators heard cases from all of these places, they integrated each region into a single imperial legal regime. Together, these movements by French subjects formed an empire-wide choreography of justice, a complex pattern of movement that involved plaintiffs, defendants, witnesses, and magistrates.

This choreography converged under the common roof of each conseil supérieur, in which many *ancien régime* subjects negotiated cases. While the lives of court employees from the previous chapter illuminate a community of highly literate and connected elites, a survey of adjudicated cases helps uncover a much wider range of court participants who came from all layers of colonial and metropolitan society. These court participants, with conseil employees, constituted the legal culture of France's *ancien régime* empire. Scholars who work on the Antilles and Mascarenes as slave societies most often tell the story of these legal regimes from the vantage point of criminal cases that fell under the jurisdiction of the *Code Noir* (that governed slavery in France's overseas colonies) in order to uncover the lives of enslaved people.³³⁸ However, conseil records indicate that French subjects from many backgrounds negotiated a variety of civil and criminal legal matters. This chapter focuses on those subjects who most frequently used the conseils supérieurs and left their mark through conseil records. Most court users were from the upper ranks of colonial society, including many of the same magistrates and planters who dominated the conseil membership. However, participants also came from lower layers of colonial society like Paul the shipworker, carpenters and innkeepers,

³³⁸ Because of the coercive nature of slavery, historians who look at the law in slave societies most often focus on criminal law. E.g. Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012). For an Anglophone comparison, see Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870* (Durham: Duke University Press, 2004).

and some free people of color. Even enslaved people entered the courts as defendants and witnesses. Though enslaved people, nonelite whites, and planters entered courtrooms with vastly different expectations about what kind of justice they would receive, they shared common spaces and confronted a predictable set of magistrates who held the power to determine their cases. Conseil cases document this cross-section of society from the vantage point of a discrete place.

Because the setting and general parameters of judicial practices did not vary from place to place, conseil cases from Atlantic and Indian Ocean contexts can be analyzed together. The cases discussed below reveal that conseil cases contained a remarkably similar range of causes and participants. Civil cases often centered on disputes over colonial property like plantations, while criminal cases tended to focus on the alleged nefarious acts of soldiers and slaves. The majority of court proceedings in both the Antilles and the Mascarenes stayed within these regional settings, but court users in both places did not hesitate to seek hearings in metropolitan France through appeals of conseil decisions. Cases that were heard in metropolitan France, too, were sent to colonial conseils. All three areas under investigation in this study—France, the Antilles, and the Mascarenes—were bound together through court cases in the colonial conseils and metropolitan jurisdictions. French subjects used them and interjudicial correspondence between these forums to navigate the legal geography of France's *ancien régime* empire, carefully marking out their steps in reference to other court users and magistrates to create a global choreography of justice.

This chapter explores court practices and the experiences of these court users in two ways. First, it examines how court users participated in a choreography of justice through the processes and outcomes of their court cases that were based in the conseils supérieurs, scattered around France's empire as a set of judicial entrepôts. Colonial legal

practices in general are still very little understood, especially how they were engrained in colonial society and the wider legal geography of France's *ancien régime* empire, despite work by historians of race and slavery that has shown the degree to which enslaved and emancipated people used legal methods to obtain and preserve emancipation.³³⁹ While the last chapter emphasized magistrates as critical actors within this apparatus, this chapter follows court participants through court cases drawn from the Antilles and Mascarenes to explore how French subjects pursued and experienced justice in the conseils supérieurs. These courts provided forums for a range of subjects to contest both civil and criminal matters. Conseils were clearinghouses for judicial matters that concerned the French subjects who traveled around the globe and contributed to the growth of France's *ancien régime* empire with their work in areas like trade, agriculture, and the military.

Second, court users navigated the legal geography of France's *ancien régime* empire beyond the conseils to other judicial entrepôts, including those in metropolitan France, via interjudicial correspondence and court appeals. Some colonial subjects were aware of and sought to gain access to judicial entrepôts beyond the conseils, especially forums like the Ministry of the Marine and the king's councils that had the power to overturn conseil cases. They did this both by writing to metropolitan administrators and by formally appealing their cases. Metropolitan court administrators and users also reached out to overseas jurisdictions through interjudicial correspondence and judicial

³³⁹ For free people of color in Saint-Domingue, see John D. Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (New York: Palgrave Macmillan, 2006). For slaves in the French Caribbean see Ghachem, *The Old Regime and the Haitian Revolution* and Bernard Moitt, *Women and Slavery in the French Antilles, 1635-1848* (Bloomington: Indiana University Press, 2001). For slaves who went to France, see especially Sue Peabody, *"There Are No Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996). For slaves and free people of color in the Mascarenes, see Richard Blair Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius* (Cambridge: Cambridge University Press, 1999) and "Creating Undiminished Confidence: The Free Population of Colour and Identity Formation in Mauritius, 1767-1835," *Slavery & Abolition* 32.4 (2011): 519-533.

processes. In France, royal ministers sought to check the power of the *conseils* and to ensure that *conseil* decisions accorded with their goals. Metropolitan courts could also redirect cases from one *conseil* to another for final judgment, outsourcing definitive adjudication to the *conseils*. These patterns of movement engrained both metropolitan and colonial courts within a global French legal geography in which the metropolitan center at Versailles formed the core. This arrangement allowed court participants and magistrates to steer cases both to the center at Versailles back out to the regional *conseils* (as well as the *parlements*). The choreography of justice anchored in the Antilles and the Mascarenes in the *conseils* was likewise grounded in metropolitan France in the Ministry of the Marine and king's councils at Versailles.

Examples of how French subjects chose to participate in this choreography of justice reveal that these calculations followed predictable patterns, but that the outcomes of cases were not always certain. All of these strategies—court use, appeal, and interjudicial correspondence—were risky. Court users sometimes chose to litigate for decades, while others resorted to alternative means like interjudicial correspondence. Some court users found themselves barred from participating in the choreography of justice when they were convicted of crimes and punished or banished. Court cases and interjudicial correspondence provided complementary means of judicial negotiation that could each be employed when the other was not working, but court users were not assured that their cases would achieve a desired outcome.

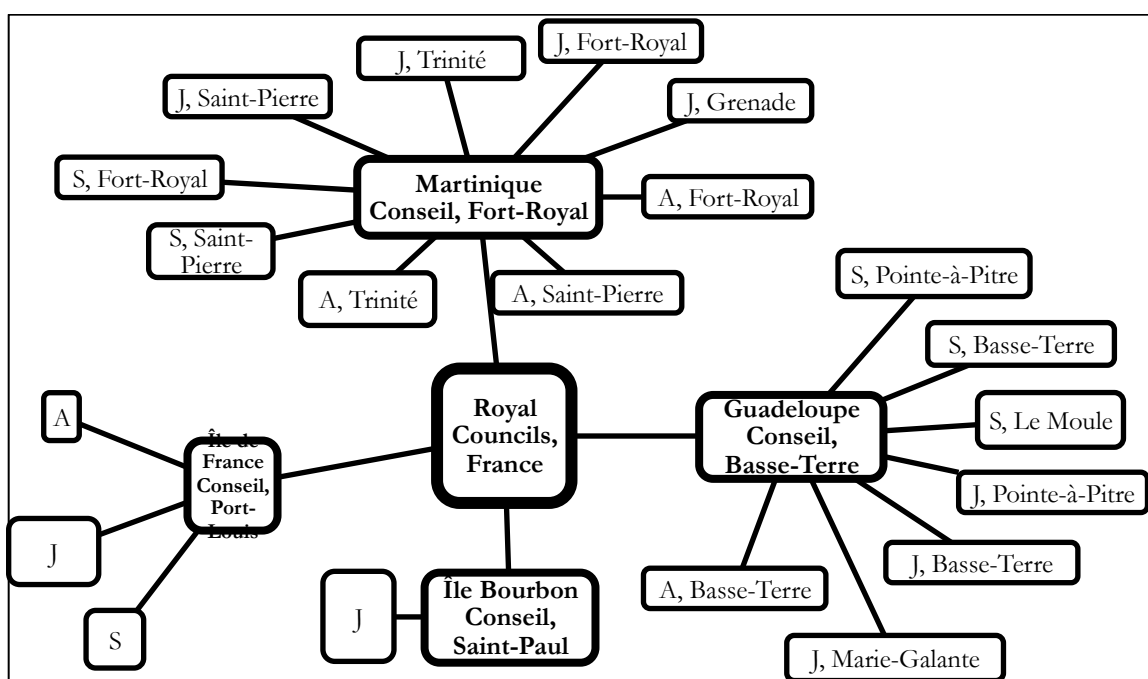


Figure 2: Judicial Entrepôts in Selected Colonies³⁴⁰

ACCESSING JUSTICE

Conceptualizing judicial processes as a choreography of justice illuminates the pathways that connected individual judicial entrepôts from courts of first instance to the highest appellate resort, the king's personal councils. Conseils supérieurs sat at the heart of the legal geography of France's *ancien régime* empire between these extremes, as seen in Figure 2, Judicial Entrepôts in Selected Colonies. Judicial processes tended to push cases toward the *conseils*, from both lower jurisdictions (as appealed cases) and from higher courts in France (as colonial administrators often sent appealed cases back to the

³⁴⁰ Compiled from ANOM COL E, Personnel colonial ancien. Abbreviations: S = Sénéchaussée, J = Juridiction, A = Amirauté.

conseils for final judgment).³⁴¹ Within the conseils, court participants used their knowledge of the law and legal process to defend their positions but they did not hesitate to appeal conseil decisions when they received unfavorable judgments. Likewise, magistrates sought to manipulate the steps taken by court participants through their decisions, especially in the criminal punishments that publicly defined the boundaries of acceptable behavior and physically sanctioned the bodies of those who transgressed them.

The *conseils supérieurs* played a critical role as judicial entrepôts within the overall legal geography of France's *ancien régime* empire as they were situated between the lower courts in which court cases were often originated in lower courts and the highest metropolitan jurisdictions to which cases could be appealed. Jurisdictions both below and above the conseils often served as funnels that moved initiated cases to the conseils for adjudication. Lower courts like *sénéchaussées* and courts of first instance known as *juridictions* or *sièges royaux* existed in the colonies as well as metropolitan France, but in the colonies they were usually very small.³⁴² These courts often sent cases to the conseils upon which they did not feel qualified to rule. They also had to appeal to the conseils first before they could send cases on to be heard by metropolitan magistrates. In France, royal ministers often sent cases appealed from the conseils back to the conseils

³⁴¹ For the Atlantic dimensions of these movements in terms of geography, see Map 3, The Atlantic Ocean Region and for the Indian Ocean dimensions see Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

³⁴² However, like the local assemblies discussed later in chapter four, these organizations are virtually unknown for France's overseas colonies. For a simplified visualization of the conseils in reference to other jurisdictions, see Figure 2, Judicial Entrepôts in Selected Colonies. I hope to examine these other jurisdictions, especially the admiralty courts, in future research. For lower courts, including *sénéchaussées*, in France, see Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009); Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, NY: University of Rochester Press, 2008); Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (Rochester, NY: University of Rochester Press, 2008); Hervé Piant, *Une Justice ordinaire. Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime*. Préface de Benoît Garnot (Rennes: Presses universitaires de Rennes, 2006).

for final judgment rather than ruling themselves. As these cases traveled to and from the conseils, all of these judicial entrepôts were increasingly bound together in a common legal culture that was anchored on the conseils. A choreography of justice thus reveals the ways in which individual jurisdictions fit together within France's *ancien régime* empire.

A choreography of justice also provides a holistic framework that recognizes the power asymmetries inherent within *ancien régime* society, particularly in the colonial slave societies within the French empire, without making these relationships appear static or pre-determined. Court users interacted with the *conseils supérieurs* in a variety of capacities. Some, like many conseillers, used the courts often to solve disputes about money and reputation, and to advance their own position in society. Others found themselves summoned to the conseil chambers after having been accused of wrongdoing, but quickly oriented themselves to begin to use the courts to fight back against those charges. Those with few legal rights, especially slaves, also entered the courts as witnesses and defendants.

Conseils occupied a central position as colonial societies worked out legal practices because French subjects depended upon them to provide justice through the cooperation of magistrates and court users. Unlike common law systems like the British empire, France's civil law system depended upon the adjudication of cases by panels of magistrates, rather than a combination of judges and juries. In the French system, local opinions about justice were accessed informally in the courtroom through practices the interrogation of witnesses and outside the courtroom through public responses to laws, like debates about proper court etiquette and public speech in the Bordenave and La Grange cases from chapter one and the convergence of local assemblies against royal administrators in both Martinique and Île de France discussed in chapter four below.

Likewise, even unwitting court participants, like deceased French subjects whose vacant estates came under conseil jurisdiction, influenced how the conseils practiced law. Residents brought their grievances from around each colony and even from neighboring islands to the conseils for judgment. The knowledge that court participants created was then put into the conseil greffes, which could be accessed by and disseminated among imperial participants in a variety of ways (as discussed in the first and last chapters).³⁴³

Civil and criminal cases percolated up from lower jurisdictions and through the initiative of litigants into the conseils and beyond to metropolitan courts. One important direction of movement within the choreography of justice was the arrival of French subjects at the *palais de justice*, the site of conseil meetings, to participate in and hear cases.³⁴⁴ Evidence and other court documents have often been lost in the colonial records, but the summaries provided in *greffes* and legal codes show that colonial courts followed very similar procedures to metropolitan courts.³⁴⁵ As in France, civil court cases in the colonies were initiated when a plaintiff (or plaintiffs) registered a complaint with the court registrar (*greffier*). Criminal cases were usually filed by the conseil's general prosecutor. However, conseils heard both kinds of cases in the same monthly sessions, so they can be analyzed together as part of the same the choreography of justice. Litigants chose to enter the courtroom, witnesses were compelled to come and give testimony, and spectators were attracted to court proceedings as events. This trajectory also included those who did not enter the courtroom or *chambre de greffe* (room where the court registers were made and kept) itself, but only came as far as the public punishments and

³⁴³ For early modern English litigation as a comparison, see e.g. C. W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008). For court practices in early modern France, see especially the discussion in chapter two, "Economies of Justice: The Possibilities of a People's Court," of Hardwick, *Family Business*, 57-87.

³⁴⁴ For more on the sites of judicial proceedings, refer back to the discussion in chapter one.

³⁴⁵ For similar court procedures in France, see Piant, *Une Justice ordinaire*.

publications of edicts that were issued by the conseils. Second, magistrates gathered evidence through a series of written depositions and oral interviews, while litigants produced evidence like notarized transactions and letters. They collected statements by witnesses, usually listed one after another, with just a paragraph summary of each person's statement. Interrogations were usually conducted by a *conseiller* in the presence of another *conseiller* who acted as a recording secretary. For civil cases, these would often consist of a list of questions and answers while in criminal cases. From there, conseil cases could be mediated, decided, or pushed on to other jurisdictions through appeal.

Though appeals and interjudicial correspondence allowed the choreography of justice to stretch beyond individual jurisdictions, court users and administrators primarily interacted with each other in court proceedings that took place in each colony in the conseil's *palais de justice*. As in France, court cases could be mediated within the court, without reaching a particular sentence. Cases involving colonial elites, especially those who worked on the conseil or similar elite governing bodies, were often adjudicated in the courtroom by local magistrates, creating a space in which local elites could police each other. When Philippe Brunet (the secretary of the Chamber of Agriculture in Martinique), pursued Simon Chauvot (a royal prosecutor in the Fort Royal jurisdiction) for an outstanding loan in 1755, they were heard by a panel of their peers. It took place as an "ordinary" hearing in the conseil courtroom in Fort Royal with Jean Médéric Moreau, a local judge, and Etienne Mailhard, a conseil *procureur* presiding. As an officer in the Chamber of Agriculture, Brunet would have been one of the island's most prominent planters who held significant power in controlling the island's economy. Chauvot was likely of a slightly lower rank as a prosecutor, but was still well-entrenched among the island's elite as a royal prosecutor. However, Chauvot's legal experience on the lower

court meant that he understood the local choreography of justice from an insider's point of view. Some of Brunet's friends resented the mediation as too lenient a treatment for his delinquent debt payment, implying that they recognized Chauvot's advantage in choosing the court.³⁴⁶ For people like Chauvot and Brunet who were closely connected to the conseil, colonial courts were forums in which they could manipulate personnel to work out financial disputes and prosecute enemies.

Though court users varied in their proximity to the conseils in terms of personal connections and geography, disputes were negotiated from communities to courts of first instance and then to the conseils.³⁴⁷ By 1716, a series of complaints against the Martinican La Bouralière for blasphemy and swearing had reached local magistrates in Fort Royal, the colonial capital. Six merchants, surgeons, and artisans from the Cul de Sac Marin region right outside the main town of Fort Royal gave statements to the royal *procureur*, denouncing him as a "horrible blasphemer" and requesting his arrest. A few witnesses even declined to quote his exact words because they were so offensive. As in early modern France, colonial court cases often involved speech crimes, like blasphemy and sedition, that undermined the civic order by challenging religious and judicial authorities.³⁴⁸ La Bouralière's inflammatory statements prompted members of Fort Royal's professional elite to unite against him through the mechanism of legal action that they initiated in the local jurisdiction.³⁴⁹

³⁴⁶ ANOM COL E 55, Philippe Brunet.

³⁴⁷ Julie Hardwick has uncovered similar processes of judicial negotiation from community to court in seventeenth-century France. Hardwick, *Family Business*.

³⁴⁸ For analyses of slander in early modern France in the sixteenth and seventeenth, and eighteenth centuries, respectively, though with more attention to print culture than to judicial settings, see Emily Butterworth, *Poisoned Words: Slander and Satire in Early Modern France* (Leeds: Legenda, 2006); Robert Darnton, *The Devil in the Holy Water or the Art of Slander from Louis XIV to Napoleon* (Philadelphia: University of Pennsylvania Press, 2010).

³⁴⁹ ANOM COL E 240, La Bouralière, de.

However, these court users also brought charges of theft that raised the stakes of La Bouralière's actions to a level that encouraged the court to rule against him, in addition to the legal sanction against his speech prompted by his blasphemy. One of the surgeons explained that La Bouralière had made one of his slave women steal chickens and some plates from one of his neighbors. Other strikes against La Bouralière included reports of bad conduct (including blasphemy) in a cabaret, which had allegedly been followed by La Bouralière's threats to the cabaret owner that he would burn down the place. In the response to this evidence and to the pressures of the group of local elites who brought the charges, the lower court (*juridiction*) ruled against him.³⁵⁰

The lower court's punishment emphasized La Bouralière's responsibility to amend his actions to the entire community, not just to the magistrates in court or the local elites who had brought the case. The court specified that La Bouralière would have to participate in a public procession of repentance. He would then be forced to endure having his tongue pierced and finally he would be banished from the islands forever. A later sentence added the death penalty to these retributions. The layers of punishment enacted by the local jurisdiction implied that they were meant to emphasize the depth of his crimes, even if they left little physical damage. By forcing La Bouralière to walk the streets of Fort Royal in public humiliation, the court made him symbolically undo his irreligious words, replacing them with proper words and actions that acknowledged his position within (and under) the authority of the king and conseil. By then requiring La Bouralière to leave the islands altogether, the court planned to erase both La Bouralière's actions and his presence from Martinican society.³⁵¹

³⁵⁰ Ibid.

³⁵¹ Ibid.

In the face of punishments designed to whittle down his reputation in Martinique so thoroughly, La Bouralière must have held out little hope for a favorable ruling if he appealed to the Martinican conseil. Instead of requesting an acquittal or lower penalty from the conseil, he traveled to France to try to get a royal pardon.³⁵² This marked a conscious departure from a typical choreography of justice, in which defendants most often appealed to the next highest jurisdiction—in this case, the conseil. La Bouralière also chose not to use interjudicial correspondence, which would have allowed him to appeal beyond the conseil but without having to leave Martinique. The decision to travel to France made better sense for La Bouralière because it meant that he could leave the colony as his detractors had wanted but gave him personal hope that he could be declared innocent.³⁵³

The conseil took part in this case even though it did not ever appear on their docket when La Bouralière decided to leave Martinique rather than appeal to them. A little while after La Bouralière's death, in 1719, the conseil, led by the governor general, requested a pardon (as *lettres de grace*) and a rehabilitation of La Bouralière's memory. The governor general argued that all of the men who originated the case were La Bouralière's enemies or debtors.³⁵⁴ Even though it was too late for La Bouralière to be acquitted in the conseil, the conseil sought to make sure that La Bouralière's reputation was restored. Though La Bouralière chose not to pursue his case in the conseil, the court seems to have been disposed to rule in his favor. La Bouralière's decision to seek a royal pardon in France marked a conscious departure from a more common trajectory of court

³⁵² He appears not to have received the pardon as he died as soon as he got to France. Ibid. Other court users, like the conseiller Jean André de Ribes from Île de France, tried the same strategy but with more success. Ribes's case is explained in chapter four.

³⁵³ ANOM COL E 240, La Bouralière, de.

³⁵⁴ Ibid., Report by Feuquières and 25 April 1719.

users through the court system from local jurisdictions to conseils to metropolitan jurisdictions. However, the decision of the Martinican conseillers to act on La Bouralière's behalf—even after he had died—indicate that court administrators could respond to the actions of court users to manipulate the choreography of justice toward an end that court users would want, even if not through standard legal processes.

Court cases in judicial entrepôts like the Martinican courts offered spaces in which ideas about proper behavior and societal norms could be worked out. As in the Bordenave and La Grange sedition cases cited in the previous chapter, this case depended upon the adjudication of disputes about public order, especially regarding proper speech and conduct. Court participants in both the colonies and metropole disagreed about the degree to which La Bouralière should be held responsible for his irreligious and threatening speech. Some, like the governor general, called into question assertions that he had even made these statements. Others, like the local elites who originally accused La Bouralière made a case that his threats constituted a serious danger to Martinican society because he had cursed the divine authority, assumed to undergird France's *ancien régime* empire itself in this era permeated with ideas about absolutist monarchy.³⁵⁵ Unlike Bordenave and La Grange, who had only disrupted court proceedings by insulting the conseillers, La Bouralière had backed up his seditious words with criminal actions when he threatened to destroy the property of the cabaret owner and stole livestock from others. However, in all of these cases, the conseils were critical sites in which French subjects could adjudicate these disputes.

³⁵⁵ These ideas could be found throughout France's *ancien régime* empire. For an Indian Ocean example, see chapter five for the case of Jean Daniel Dumas, the Île de France governor who banished that conseil's prosecutor on charges of having disrespected him (and the king) by neglecting to attend a religious ceremony.

Besides disputes about civil order, the conseils, like metropolitan courts, also played a critical role in the area of finance. Civil cases often concerned complex financial issues like property sales and estates, as well as instances of financial malpractice like fraud, though the latter became increasingly criminalized in the eighteenth century.³⁵⁶ Conseil cases sometimes involved very local matters, like corruption within conseils, that revealed choreographies of justice within the small colonial elite of planters, magistrates, and administrators who dominated the conseils in both the Antilles and Mascarenes.

One case from Île de France highlights the degree to which internal corruption marred the choreography of justice within the conseils among a small collection of conseil employees. In the late 1770s, conseil officials in Île de France noticed irregularities within their own ranks. The chief *greffier*, Jean Lousteau had started a side business creating extra legal documents and was charging twelve livres for each one, for which he was paid personally.³⁵⁷ Lousteau had recognized a local demand for legal services and supplied it with his own legal expertise and ready access to the conseil's greffes. Following an investigation, the intendant reported that Lousteau owed the colonial government 15,075 livres for fraudulently creating these documents and selling them. The Île de France conseil quickly convicted Lousteau and the intendant and governor appointed Lousteau's nephew, Pouey, to fulfill his obligations as greffier while

³⁵⁶ The legal definition of fraud shifted at a key moment in 1680, when Louis XIV issued a law that distinguished between fraud committed while acting in a public office from fraud committed outside of official duties. The death penalty was maintained for the former (though magistrates did not have to call for it), while for the latter category magistrates could choose from a variety of punishments that included capital punishment. Description of royal laws issued in March 1531 and March 1680 in the entry for "faux," *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, eds. Denis Diderot and Jean le Rond D'Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed.), <http://encyclopedia.uchicago.edu/>, Vol. 6, 440.

³⁵⁷ For more on Lousteau as a greffier, see chapter two.

the court's general prosecutor, Jean André de Ribes, investigated him.³⁵⁸ Though Lousteau's case hinged on the issue of fraud perpetrated while in public office, but it also revealed that the Île de France relied upon a very small assortment of officials, including Ribes (who appears throughout this study) and Lousteau's nephew to supply a local demand for legal documents centered on the conseil.³⁵⁹ Civil cases like Lousteau's were most often brought by affluent members of colonial society, like the planter and conseil elite, in contrast to French subjects of lower rank (like sailors and slaves) who appeared most often in criminal proceedings.

Besides cases of fraud, local elites often pursued business associates over cases involving the plantations that drove Antillean and Mascarene agriculture and trade. Drawing together investors, agents, and other interested parties, these kinds of cases more often included subjects who lived on both the metropolitan and colonial sides of France's *ancien régime* empire, in contrast to the very local scale of cases regarding civic order like La Bouralière's.³⁶⁰ These civil cases therefore tended to involve proceedings in courts in metropolitan France and the colonies as court users in both places produced

³⁵⁸ ANOM COL E 339 bis, Pouey. This was done with the approval of Castries, the minister of the marine, in France. It is not clear whether Castries was involved in the fraud case, however.

³⁵⁹ Though the conseil eventually ruled against Lousteau, the Marine chose to quash the conseil's decision against Lousteau from 30 December 1778 and instead to create a new system of fees for greffe services to deter enterprising court staff from copying Lousteau's scheme. ANOM COL A 20 F° 257, 25 September 1779.

³⁶⁰ An interesting possibility for future research is the degree to which this kind of civil litigation appeared solely in the conseils and *parlements* in port cities like Bordeaux as compared to jurisdictions, like merchant courts, that were designed for more explicitly commercial matters. It is helpful to note that merchants (*négociants*) rarely appear in conseil litigation, though property owners (whether planters, magistrates, or other elites) constitute a sizeable proportion of these cases, though the fragmentation of this evidence makes it difficult to give a precise percentage. For merchant courts in France, which did not exist in overseas colonies, see Amalia D. Kessler, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, CT: Yale University Press, 2007).

evidence that they deposited with the courts.³⁶¹ In 1722, Pierre Despert sought to buy a plantation in Guadeloupe from Jean Drouet, a Martinican, and delivered an initial payment of 1,000 livres in wine. After making the payment he was surprised to discover that Drouet had already sold the plantation to another man named Blay through an agent. Armed with a stack of notarized documents and letters regarding his earlier right to buy the plantation, Despert went immediately to the local court of first instance (*juridiction*) in Guadeloupe to initiate legal action against Drouet for breaking a contract of sale. Drouet responded by submitting his own notarized documents, including material that explained that he had originally outsourced the sale of the plantation to an agent to whom he had granted power of attorney (*procuration*). Drouet explained that in the mean time he had found Despert as a ready buyer, so he had agreed to sell the plantation to Despert. However, the agent had simultaneously found a different buyer and made the transaction before Despert could complete his purchase.³⁶² French subjects, especially colonial investors like Despert, did not hesitate to rush to local courts to submit complaints based on financial disputes and they usually arrived prepared with evidence to support their cases. They recognized these courts as valid forums for dispute settlement especially after initial negotiations witnessed by notaries broke down.

However, property cases like Despert's and Drouet's competing claims were complex, so courts did not always respond with clarity or consistency. Cases like this one

³⁶¹ French colonists appear to have been litigious even in places like Louisiana where they were not allowed to have lawyers, but Shannon Lee Dawdy argues that the lack of official representation could contribute to a more egalitarian legal system in which each person represented themselves. Shannon Lee Dawdy counts "an average of at least eleven suits per week" in Louisiana's conseil supérieur in the 1740s as a high rate of litigation. However, Antillean and Mascarene litigants (especially frequent court users like conseil members), like Roffay and Clouet, were often lawyers themselves, so there was a greater range of official representation and nonrepresentation (as in cases like Blot's). Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans* (Chicago: University of Chicago Press, 2008), 205.

³⁶² ANOM COL E 127, Pierre Despert.

also coincided with a rush to invest in new tropical plantations in the first half of the eighteenth century, so Guadeloupe was flooded with other would-be plantation buyers at the time.³⁶³ An initial court ruling from 11 August 1723 found that Despert could keep the plantation he had acquired from Drouet, but a conseil ruling from 5 March 1724 overturned that decision. These factors prompted litigants to seek appeals in other forums throughout the legal geography of France's *ancien régime* empire. Drouet and Despert kept the case going for the next four years until it finally reached metropolitan France, where officials in the ministry of the Marine overturned the conseil's decision and ruled (like the initial jurisdiction) in favor of Despert. However, even then the case had not been completed. On 17 July 1729, the Guadeloupe conseil ruled again against Despert, this time at the initiation of one of the conseillers. Despert appealed the case again to metropolitan France, where the conseil's decision was once again overturned. The metropolitan magistrates decided not to rule definitively this time, but instead gave orders on 24 September 1731 that the litigants were to be sent to a new jurisdiction entirely, the Martinique conseil and intendant, for final judgment. Drouet and Despert's case spanned the breadth of the Atlantic portion of this legal geography as it traveled from Guadeloupe to France and back twice, before it was finally sent to the Martinique to be completed.³⁶⁴

This case throws light onto a common, but very unstudied, kind of case in France's tropical colonies: civil litigation over plantations. Scholars know well that plantation agriculture to produce cash crops drove much of France's economic growth in

³⁶³ Laurent Dubois, *A Colony of Citizens: Revolution & Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill: University of North Carolina Press, 2004), 35-6. Though Guadeloupe was always dominated by Martinique politically and commercially, it had more arable land, so was a popular site for Martinican investors like Drouet who sought to expand their plantation holdings in this period and later sell them at a profit to other planters, like Despert. I plan to interrogate the legal and financial dimensions of these transactions to understand how French subjects managed risk during this period in a future project.

³⁶⁴ ANOM COL E 127, Pierre Despert.

the eighteenth century, particularly as demand for products like sugar and coffee increased the use of coerced labor by enslaved Africans in both the Antilles and Mascarenes.³⁶⁵ However, plantations were complicated and expensive endeavors that required substantial up-front investments to procure land and slaves. Cases like Despert's disputed plantation sale show that these investments were dependent upon the conseils as legal forums that could collect evidence from disputing parties and adjudicate cases in the colonies. Court users could also use the conseils as springboards from which to appeal these kinds of cases to metropolitan jurisdictions for final judgment. The transfer of Despert's case to the Martinique conseil after metropolitan review further underscores the importance of the conseils supérieurs as judicial entrepôts as metropolitan administrators chose to use conseils to finish out cases that they did not want to rule on definitively.

This case also illustrates the local, regional, and transatlantic dimensions of the choreography of justice undertaken by French subjects in the courts. The initial transactions related to the sale of the plantation were confirmed in writing by local notaries, while once the sale became controversial, each party (Despert and Drouet) made sure to deposit these notarized documents with the Guadeloupe judge. This case also had regional dimensions that illustrated patterns of movement within the Antilles as a subset of the wider imperial choreography of justice. Court users in this case lived in different colonies, but were mobile enough to move between them often. Drouet lived in Martinique and his plantation for sale was in Guadeloupe, while Despert lived in Guadeloupe. As they went to court in Guadeloupe, they transferred documents from Martinique and Guadeloupe and from rural Guadeloupe to the conseil in the town of Basse-Terre. They worked through one court at a time as they negotiated this case, first in

³⁶⁵ See, e.g. Robert Louis Stein, *The French Sugar Business in the Eighteenth Century* (Baton Rouge: Louisiana State University Press, 1988).

the Guadeloupe jurisdiction and then in the conseil.³⁶⁶ However, upon appeal beyond the conseil (two times), this case crossed the Atlantic and entered a metropolitan jurisdiction, where magistrates decided first (in 1728) to overturn the Guadeloupe conseil's decision and rule in favor of Despert and then (in 1731) to send this case to the Martinican conseil and intendant for final judgment.³⁶⁷ Unlike La Bouralière's case, Despert's personnel file does not contain proof that any of these litigants traveled themselves to France to appeal this case, but evidence of their words and actions did cross the Atlantic in the form of court testimony and evidence. For tenacious litigants like Despert and Drouet, judicial entrepôts across the entire breadth of France's legal geography could become sites for confrontation.

Court users like Despert and Drouet in both the Antilles and Mascarenes did not hesitate to pursue each other to appellate courts in France. Heirs and relatives of conseil members often resided in France, so the transfer of litigation to metropolitan jurisdictions could be motivated by a desire to include other important players in financial cases. Civil cases over financial matters were usually worth pursuing across the vast oceanic spaces that separated the Antilles and Mascarenes from France when significant resources were at stake and the litigants had cases that were locked up in the conseils. Julien Antoine Clouet, a conseiller in both Mascarene conseils, pursued the conseiller and Île de France treasurer, Marie Joseph Roffay de Loudières, to the king's council (*conseil du roi*), for debts he accounted to 87,985 livres—a sum that could purchase a plantation and several

³⁶⁶ And later in the Martinique conseil when it was sent there by the metropolitan administrators. I have yet to uncover evidence about this (presumably) final stop in the course of this case. ANOM COL E 127, Pierre Despert.

³⁶⁷ ANOM COL A 1 F° 303, 3 January 1728. ANOM COL A 2 F° 120, 24 September 1731. These metropolitan appeals do not specify which metropolitan jurisdiction exactly ruled on these cases (whether the Marine or the king's personal councils). This uncertainty may also be due to the fact that this case happened during an era of regency in France as Louis XV began to rule alone in 1723 following a regency period, so ministers and royal councils were in transition.

slaves at the time.³⁶⁸ The case was originally heard in 1770 in the Île de France conseil, which had been granted powers in 1768 to liquidate and reduce the debts of inhabitants, indexing them to currency values.³⁶⁹ However, Clouet was not satisfied with the conseil's handling of the case and sought the expertise of the king's council in dealing with the technical matter of currency values. Clouet ended up suing Roffay's widow in France after Roffay died in the course of the case. The case was eventually heard in France for a final judgment, but the metropolitan court decided to return the case to the Île de France conseil.³⁷⁰ Civil cases, like this one, were much less likely to be completed than criminal cases and they often became protracted as they moved from one colonial or metropolitan judicial entrepôt to another.

Unlike civil cases that were more likely to involve parties in both colonial and metropolitan France, criminal cases dealt with acts that had occurred specifically within the colonies so they tended to be adjudicated much more quickly on a local, rather than imperial scale. Convicted criminals appealed their cases as did civil litigants, but criminal sentences were appealed from lower jurisdictions to the conseils with the hope that the conseil would soften a lower court's ruling. In 1752, Marie Rose Manuel, a free black woman in Martinique, was accused of complicity with a slave named Jean Batiste, who had allegedly done "maléfices" or cast evil spells. Jean Batiste died in prison, but a lower court judged that Marie Rose was to be banished from Martinique for five years, on pain of being severely beaten by the executioner. She appealed this ruling and the conseil modified the sentence to have her submit to thirty-nine lashes and be attached to a pillory

³⁶⁸ ANOM COL E 85, Julien Antoine Clouet and ANOM COL E 356, Marie Joseph Roffay de Londière.

³⁶⁹ Cited in ANOM COL E 85, Julien Antoine Clouet, documents submitted in the généralité of Paris.

³⁷⁰ ANOM COL A 18 F° 173, 7 July 1770. For more on metropolitan responses to conseil cases, see below.

for two hours.³⁷¹ Marie Rose was likely spared a harsher physical punishment due to her free status, which contrasted with the imprisonment (probably accompanied by beating) of the slave Jean Batiste.³⁷² Marie Rose counted on the threat of beating in case of recidivism as good indication that her appeal could be limited to a physical punishment rather than long-term banishment from which it would likely be difficult to return.³⁷³

Criminal cases were much more likely to reach the sentencing stage than civil cases. Magistrates chose from a familiar menu of fines, locational punishments (like banishment and the galleys), and physical punishments (like branding and hanging) that were standard in metropolitan France as well as in overseas colonies. These were issued in predictable patterns that conformed largely to the 1673 criminal code, with the important exception of crimes perpetrated by slaves, which were much more frequently issued in colonial courts than in metropolitan ones, where slavery was at least theoretically absent.³⁷⁴ The severity of crimes was more or less clearly matched with the severity of punishments that could be expected. White, or non-slave, defendants were much more likely to be punished with a fine—usually between 100 and 500 livres—than with physical punishments like whipping. For them, mid-level punishments could include branding.

Magistrates, especially the conseillers and administrators discussed in chapter two, were crucial to this process because they were responsible for leading court

³⁷¹ ANOM FM F/3/245 Martinique, 85-6. July 1752.

³⁷² For enslaved people like Jean Batiste, appeals almost always meant harsher sentences. See also the Thelemaque case discussed below.

³⁷³ For more on banishment cases, see below.

³⁷⁴ Metropolitan France was, throughout the eighteenth century, considered to be free soil territory. However, scholars have shown that the theoretically impermeable boundary between free and slaveholding territories was not actually impassable. For these themes, see especially and Peabody, *“There Are No Slaves in France”* and Pierre H. Boulle, *Race et esclavage dans la France de l’Ancien Régime* (Paris: Perrin, 2007).

participants in this dance. They held, on the one hand, legal knowledge compiled in the greffes of royal edicts, previous court cases. But they were also responsible for listening to new evidence that came into the court via litigants and witnesses. Their role was to lead colonial communities in matching the “music” of French law to the “steps” of judicial process.

The practice of most punishments in public created a special kind of outdoor annex to the conseils supérieurs. Conseil decisions made in the semi-private space of the conseil hearings (*audience*) and the private space of conseil deliberations (*séance*) were carried outside to where conseil punishments were put into action in front of an audience that presumably included local elites like conseil members and military officers as well as slaves, planters, and urban artisans and merchants. All layers of colonial society had access to the process of justice presided over by the conseils supérieurs, at least through direct observation.

Most criminal cases involved slaves, so the public nature of executions likewise reinforced boundaries between free and enslaved people and power relationships between masters and slaves in the unique context of France’s overseas colonies, which differed from metropolitan France in this key respect. While the observation of colonial justice was available to all members of society it did not imply equality among those members.³⁷⁵ Slaves, like other litigants, made conscious calculations when they participated in conseil proceedings, especially criminal cases in which they were defendants. However, strategies designed to minimize or stay punishments often backfired for enslaved people when they came up against magistrates determined to

³⁷⁵ For recent scholarship on slavery and justice in Atlantic colonies, including French Saint-Domingue, see especially the special issue of the *Law and History Review* on Law, Slavery, and Justice, including Malick W. Ghachem, “Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti).” *Law and History Review* 29.4 (2011): 985–1029.

prove their power over enslaved people and reinforce the power of slave masters. Thelemaque was a slave in Martinique accused of killing his master, Sieur Verdier, with a knife in 1752. The local jurisdiction in Fort Royal ruled on 6 May to cut off his right hand on the execution block before hanging him. Thelemaque appealed his case to the *conseil supérieur* on the 9th of May, which confirmed his sentence. Thelemaque hoped that the conseil would be more lenient than the local jurisdiction and the prospect of an appeal was a last-minute calculation on his part that the death penalty was the highest punishment that a colonial court would issue.³⁷⁶

Thelemaque was wrong, however. Though conseils often confirmed lower court rulings, in criminal cases, especially those involving slaves, they sometimes added punishments. In his closing arguments (*requisitoire*), the conseil's general prosecutor added a requirement to burn Thelemaque's body in the fire and then scatter his ashes to the wind. Thelemaque was still sentenced to death, but the court proved that it could modify even this "capital" punishment to make it more painful. The Martinican conseil made a point of contrasting the value of Thelemaque's master's life, taken away by murder, with the worthlessness they saw in Thelemaque's life. The brutal addition of burning and scattering Thelemaque's body exemplified the conseil's control over Thelemaque's person—and by extension that of all slaves—and emphasized the degree to which they controlled not just life and death (the lower court did, too) but also the very existence of enslaved people. The burning and scattering of Thelemaque's ashes physically annihilated Thelemaque's existence and symbolically expunged his life from the memory of Martinican society.³⁷⁷

³⁷⁶ ANOM FM F/3/245, Martinique, 63-4.

³⁷⁷ Ibid.

Case studies from both civil and criminal proceedings in the conseils illuminate the empire-wide choreography of justice that involved French subjects in France, the Antilles, and the Mascarenes. Court users employed a range of strategies within the conseils as they sought to gain favorable decisions. Litigants like Clouet and Despert sought conseil hearings to solve financial disputes, while court personnel like Ribes pursued other conseil officers to root out corruption within the courts. Criminal defendants like La Bouralière, Marie Rose, and Thelemaque chose from a range of possible strategies to try to convince the conseils to overturn or reduce their sentences.

Conseil cases also uncover how justice operated at local and imperial scales from a single vantage point. The importance court administrators attached to public speech and punishments showed that French subjects valued and regulated conduct in very local settings, especially the immediate community as in the cases of La Bouralière and Thelemaque. Whether their setting was the Mascarenes, the Antilles, or metropolitan France, conseil cases were chiefly concerned with restoring order in the specific geographic areas under their jurisdiction. However, the frequency with which cases were appealed to metropolitan jurisdictions by court users indicates that French subjects were simultaneously aware of a wider legal geography that they could navigate through court processes.

The Tempo of Justice

Civil and criminal conseil cases also demonstrate that the choreography of justice operated at two different speeds, a slower and a faster tempo, depending upon the type of case and how many people were needed to complete the preliminary evidence-gathering and later processes of court hearings and adjudication. The slower tempo was more often associated with civil than criminal cases, especially those regarding financial transactions like loans and property transfers. These cases required the discovery and submission of

evidence that often required the help of metropolitan personnel like parish priests and municipal officials. Likewise, heirs of plantations and other forms of property were frequently located in France so magistrates wrote letters to agents (especially in port cities like Bordeaux) and waited for responses through these intermediaries.

Many cases took over a decade to work out—longer even than the nine years in which Despert and Drouet circumnavigated the legal geography of France’s *ancien régime* empire twice.³⁷⁸ For example, an Île de France military officer and apparent planter named Villemore took out a loan (“contract de constitution de rente”) in 1761 for 84,000 livres with his business partner Du Maulu. They paid back the majority of the loan, but in 1773 Du Maulu died and Villemore got behind on his payments. The loan granter, Vanthenel, pursued the outstanding debt in the Île de France conseil via correspondence as he lived in Europe. Though the initial dispute over the loan had occurred in 1773, when Du Maulu died, the case was not finalized until 1786.³⁷⁹

Five factors kept the pace of these cases slower. First, cases regarding property were the most likely to be appealed to France, which created time delays. Wealthy property owners had the resources to continue cases until they achieved a favorable or final result, pushing cases all the way to the king’s council. Though the Vanthenel and

³⁷⁸ By which I mean they appealed the one plantation case from the Guadeloupe conseil to metropolitan jurisdictions and had the case returned to them, constituting two round-trips through the judicial system. For more on this case, see above.

³⁷⁹ ANOM COL E 279, Louis Philippe Lerat de Villemore. Villemore’s file does not specify that he was a planter, but the amount of money involved was within the common range of prices for plantations at the time. He had also retired from the military by this point, and many military veterans retired to the colonies to start second careers as planters. Vanthenel originally wanted just the outstanding 4,408 livres, but by the time the case was heard in the Evreux *bailliage* court (near Rouen) in 1778, he argued that Villemore had to pay him the original 84,000 livre loan, the missing 4,408 livres, and 21,000 livres accrued in arrears (“arrérages”) over the five years between Du Maulu’s death to 1778. Villemore countered that he had submitted letters of exchange for the full amount of 84,000 livres, but they had been lost in transit between Île de France and France. The case was appealed from the Evreux *bailliage* to the Rouen (Breton) Parlement, where the court ruled that Villemore had to pay the 84,000 livres and missing 4,408 livres but this time in French currency or letters of exchange, rather than the unreliable paper money that often circulated in the Indian Ocean. Villemore tried to appeal the parlement ruling, but was denied.

Villemore case centered upon an outstanding debt of around 4,000 livres, both parties kept pushing the case until it went to the king's *Conseil des Dépêches* in 1778. Second, the number of parties to complex financial transactions like mortgages meant that cases could end up being spread across several different jurisdictions in France and the colonies. Unsatisfied with the progress of the Île de France conseil, with whom he corresponded from France, Vanthenel entered court proceedings in at least two metropolitan jurisdictions, the Evreux *bailliage* (equivalent to a *sénéchaussée*) and the Rouen Parlement, before the case was appealed to the *Conseil des Dépêches*. Third, creditors (who were also colonial investors), trading company brokers, and heirs often lived in France, while plantation managers, other traders, and other family members could live in the colonies. All of these people had to submit paperwork to the various courts to continue these cases, adding to the delays exacerbated by the geographical dispersion of the parties to the case. Especially in the initial stages of the suit, Vanthenel had to wait on the Île de France conseil to receive and reply to his messages, a process that took six months of travel for each direction of correspondence. Fourth, litigants sometimes argued that the financial principles at stake were matters of imperial importance. Residents of the Mascarenes were especially concerned about the price instability caused by the royal government's insistence on paper money starting in 1768, so cases like the Vanthenel and Villemore case were predicated on the argument that debts could not be worked out until the royal government settled the means (whether fiat currency or specie) by which they would be paid.

This delay was mirrored on a local scale by a fifth factor, bureaucratic inefficiency. Relatively simple property transactions like the Île de France carpenter Gabriel Labour's succession, which only involved one slave and a few movable goods, could take several years. Labour died in 1774 but his succession case was not completed

until 1782, eight years later.³⁸⁰ Though the conseil may have waited a little while to finish the vacant succession as they waited to hear from heirs in France, the paucity of goods and the desire for the colony to make easy money by selling Labour's unclaimed assets make it much more likely that the final filing of the succession was just a matter of slow bookkeeping.³⁸¹

A second, quicker judicial tempo was most closely associated with criminal cases, especially involving slaves, that brought local social dynamics into view. On the night of 24 February 1775, a fire was set in the plantation region of Flacq, directly east of the capital of Port Louis in Île de France. The Île de France jurisdiction in Port Louis and the conseil wrote to the Marine from Île de France on 28 March, having already conducted an initial investigation. The administrators, writing on behalf of the two courts, explained that they were fairly certain that they had already uncovered the perpetrators. The judgment had been rendered in the Port Louis jurisdiction and appealed to the conseil, which confirmed to the original ruling.³⁸² The initial investigation, lower court ruling, and appeal were all completed in just over a month in contrast to civil cases that often stretched out over many years.

The volatility of colonial societies, with large numbers of slaves and soldiers, created incentives for magistrates to make clear decisions about what crimes would and would not be tolerated and to punish them memorably. Three soldiers from the Port Louis regiment were found to be "true criminals" ("les vrais criminels"), a statement that implied villainous character as well as conduct by starting the fire. The jurisdiction and

³⁸⁰ ANOM COL E 240, Gabriel Labour. For more on Labour's case, see below.

³⁸¹ For a case that revolved around very similar issues, including questions about credit and paper money in the Mascarenes, see the lawsuit between Clouet and Roffay. ANOM COL E 85, Julien Antoine Clouet and ANOM COL E 356, Marie Joseph Roffay de Londi re.

³⁸² ANOM COL E 127, Fran ois Desperron.

conseil prescribed a punishment that was both gruesome and symbolic. The chief criminal identified by the administrators, François Desperron, was burned alive after having been exposed on the rack for an hour on 11 October and his two accomplices, Baron and Abel were hung the next day. Criminal proceedings, unlike financial cases, did not require the extensive documentation from plaintiffs who lived in many different parts of France's empire. Instead, testimony could be gathered from a few witnesses and confessions could be extracted from defendants using judicial torture.³⁸³

Criminal cases hinged on questions about local conditions and security, so administrators felt justified in using extraordinary means of punishment quickly. The governor and intendant, Tournay and Maillart, signed a report after the punishment, explaining "We regard [it] as very happy" that they had been able to uncover the people who did such an "abominable" crime and to make a "striking" ("frappant") enough

³⁸³ Ibid. Though torture appears frequently in criminal conseil cases from the eighteenth century, Julius Ruff notes that the frequency of torture in judicial cases decreased consistently during the early modern period in Europe. In France, judicial torture was officially abolished in 1788. Julius Ruff, *Violence in Early Modern Europe, 1500-1800*, (Cambridge: Cambridge University Press, 2001), 95. By the mid-eighteenth century, heated debate was going on in France and Europe over the question of judicial torture, with Enlightenment figures like Voltaire and Beccaria famously weighing in against high-profile cases of torture. The classic study of this phenomenon is Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 1st American ed. (New York: Pantheon Books, 1977). For a critique of Foucault that looks at criminal cases in the Parisian *Châtelet* and *Parlement* courts that finds much less torture was practiced than Foucault claimed, see Richard Mowery Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994). For more detailed analysis of torture in early modern France, see work by Lisa Silverman, who shows how changes in cultural and legal attitudes contributed to the end of judicial torture by the late 1780s. Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001). By the late eighteenth century, however, even colonial legal commentators like Pierre Dessalles were writing against torture. Pierre-François-Régis Dessalles, *Les Annales du Conseil Souverain de la Martinique*, T.1, V.1, 1st ed. Bergerac: J.B. Puynesge, 1786, Re-edited and reprinted by Bernard Vonglis, (Paris: L'Harmattan, 1995), 149. It is ironic to note that torture was abolished only after the conseils supérieurs were abolished in Saint-Domingue in 1787, the most violent of all of France's colonies, a fact that scholars like Charles Frostin have attributed directly to the appeals by free colored agitators like Julien Raimond to reduce abuses. Charles Frostin, *Les révoltes blanches à Saint-Domingue aux XVII^e et XVIII^e siècles*, Preface by Olivier Pétré-Grenouilleau, (Rennes: Presses Universitaires de Rennes, [1975] 2008), 230.

example.³⁸⁴ They reported their actions to the Marine, but they did not request approval for them.

In a similar case from the Antilles, a fire broke out in Saint Pierre, Martinique in May 1752 and was followed by looting in the town. An extraordinary session of the conseil was called a week later to punish the perpetrators. Magistrates quickly decided that the fire had been a slave conspiracy and charged a mixed-race enslaved woman named Nanette, having found her setting fire to the house of a Sieur Agarret the next morning. Nanette responded by accusing a boatmaster named Jean Brisson, who responded with accusations against Nanette in such detail that the conseil was quickly convinced of her guilt. The court immediately interrogated Nanette in the middle of the night, who persisted in denying her guilt to no avail. Meanwhile, Nanette refused to explain why she had allegedly set the fire, so they forced her to endure judicial torture (“la question préalable”) and then sentenced her to be burned alive among the burned houses of Saint-Pierre, symbolically destroying her body in the town as recompense for her alleged crime against the urban community.³⁸⁵ Thus within ten days (even faster than the previous Mascarene case), the conseil officials had prosecuted an enslaved woman for conspiracy and burned her alive, convicted several cabaret owners of having looted the town following the fire, and condemned two of them to be hanged the next day.³⁸⁶ As in the Desperron case, speed and symbolism were defining traits of these criminal proceedings. Extraordinary court sessions, like the conseil proceedings immediately after the fires in Île de France and Martinique, were designed as unique events that were meant

³⁸⁴ ANOM COL E 127, François Desperron.

³⁸⁵ ANOM FM F/3/245, Martinique, 69-73.

³⁸⁶ Ibid.

to reset the social order that had been upset by crime by quickly finding and punishing the offenders.

Extraordinary punishments, especially brutal and torturous punishments, were common in the colonies, but they were almost always applied to two specific groups of people: slaves and soldiers. For enslaved people, punishments were almost always physical. Thirty-nine lashes and branding (which was referred to in short hand as being “fleur-de-lisé” in reference to the *fleur-de-lis* design of the brand) were very common punishments that could easily be upgraded to death sentences. For soldiers, like Desperon, similar punishments to those that were done to slaves, like being burned alive could be specified, especially for crimes that seemed to threaten the colonial community as a whole, like arson. Both Desperon and Nanette (the Martinican slave) were burned alive for allegedly having set fire to areas of Île de France and Martinique respectively. The similarity in punishments for soldiers may have been due to the fact that colonial governance was not separated from the military—it was, in fact, constituted *by* the navy as the Marine—so there were not distinct court martial procedures. Instead, the conseil took care of cases in which military personnel were involved.

Vacant Successions

Cases like the conseil sessions in Île de France and Martinique following the fires there capture conseil administrators in motion as they gathered accused subjects into the *palais de justice* for summary judgment. However, it is important to recognize, too, the degree to which conseil employees moved outward toward colonial residents, into the streets and their homes. Conseils managed the personnel—*huissiers*, *greffiers*, *procureurs*—who went out to gather depositions from crime victims and witnesses. These officers also went to the homes of the deceased to gather succession documents and the conseil’s general prosecutor was responsible for signing off on estates once they

had been cleared successfully. They managed the estates of nonelites in addition to the longer and more complex cases of wealthy planters and merchants.

Conseils there thus influential even in the lives of people who did not necessarily choose to participate in the conseils through court proceedings. For example, Gabriel Labour died unexpectedly in Île de France in 1774 when the powder mill in which he worked as a carpenter caught on fire. His tragic death brought together many local residents—including officials as well as Labour’s friends—to gather and distribute the few possessions he had left behind. He lacked any known relatives in the colony so his estate was considered vacant. Upon tallying Labour’s possessions, the clerk valued his estate at only 1,859 livres.³⁸⁷ Of this, the majority of value was attributed to Labour’s single slave: a Malagasy woman named Angelique. Though Labour never knew about it, he too was a conseil subject as the court tallied up these few possessions and sold them to the profit of the colonial government.³⁸⁸

Vacant successions like Labour’s imply some ambivalence toward the conseils and legal services by those who could not afford to access them, but their existence attests to the power the conseils exerted over even people who did not chose to use them. Wills could be drafted by notaries or *procureurs*, but cost money to commission. For colonial residents of humble means, like Labour, drawing up a will likely seemed pointless and inefficient given a lack of nearby kin and substantial property. Labour appears never to have entered the conseil chambers himself, but the inclusion of his succession in conseil records indicates that colonial residents could be involved in conseil proceedings even without their knowledge. Because they controlled the outcome of

³⁸⁷ For the colonies, this was a very small estate. A typical sugar plantation was valued at 100,000 livres.

³⁸⁸ ANOM COL E 240, Gabriel Labour. Upon selling Angelique and the rest of Labour’s possessions, the colonial government collected 1,081 livres.

vacant estates, conseils held significant power as arbiters even over people who did not start cases or otherwise appear in their proceedings.

NAVIGATING JUSTICE

French subjects who were outside the jurisdictional bounds of the conseils *supérieurs* also knew that they could go to these courts to find legal remedies. Court participation was not limited to those whose careers kept them within the sphere of conseil politics and administration. In October 1776, a small ship called the *Pondichéry* headed from Lorient, France to China via Pondichéry. On board were several passengers, including the newly married couple of Monsieur and Madame de Chaux and a man named Salavy. On 16 February 1777, as the ship crossed the Indian Ocean, Chaux challenged Salavy to a duel, acting on suspicions that the latter had been corresponding secretly (and possibly having an affair) with his new wife of six months, who was only sixteen. That evening, while the rest of the ship's passengers were listening to evening prayers (vespers), Salavy stabbed Chaux in the chest, who died immediately. The captain, Querangal, contended that no one heard the duel until "the instant of the cry of death" because they were all occupied with the prayers.

Imperial subjects like Querangal sought to record criminal activity and other legally actionable cases with the conseils, devolving his authority as ship captain to a more secure form of justice as soon as he arrived in Île de France. The ship captain took several testimonies from passengers following Chaux's death and collected an autopsy report by the ship's surgeon. Upon finally arriving in Île de France after a hurricane that damaged the ship, Querangal wrote to the Île de France governor and intendant, Brienne and Maillart, in March to request permission to deposit a report of the duel with the Île de France conseil, which was received and signed by the general prosecutor, Ailhaud, in

addition to stopping over for repairs.³⁸⁹ Querangal deposited the testimonies and autopsy report with the conseil and requested the greatest "precautions" from the Île de France conseil for "conforming to the ordinances of the king for crimes [*délits*] committed at sea" and asked for orders on how to proceed. The captain assured the administrators that Salavy was very honest and had a reputation for good conduct, having been "generally loved and esteemed." The captain noted that he had been very surprised about the duel, as he had seen Chaux and Salavy working together and appeared to have great candor and openness with each other. "After having received aid on land" he planned to work hard to put his ship back in order [*en sureté*], especially as he feared becoming stranded in the next hurricane. Querangal worded his report in a way that reinforced the legality of his own actions, despite the illegality of the duel between Chaux and Salavy, as a persuasive strategy designed to capture the conseil's attention and assure that they heard this case.

Querangal's strategy worked. Court magistrates sought to extend their jurisdiction out to people like Querangal by welcoming their cases and using them to claim a central role for the conseils in adjudicating matters that occurred at sea as well as on land. The Chaux case was reviewed by Ailhaud, who granted amnesty to Salavy (as a *brevet de grace*) and then requested that the Île de France conseil confirm the ruling by issuing its own *arrêt*.³⁹⁰ Ailhaud insisted on making a decision on the case. The royal jurisdiction, a lower court, officially had jurisdiction as an admiralty court, but the conseil claimed precedence and insisted on liaising directly with the metropolitan government. Ailhaud requested a copy of a similar ruling (*arrêt*) so that he could model the conseil's version on a precedent. This implies that the Salavy case was somewhat extraordinary: Ailhaud

³⁸⁹ ANOM COL E 77, Louis Georges de Chaux. Report from aboard the *Pondichéry*, moored at Pavillon in Mauritius, 22 March 1777.

³⁹⁰ Ibid.

was willing to wait on new instructions, even though he wanted to push the case rather than letting another jurisdiction decide on it. Accuracy and jurisdiction were priorities for Ailhaud.³⁹¹

French subjects like Querangal became aware of the conseils as they traveled from one place to another and contributed to the growth of colonial trade and agriculture. The proximity of Querangal's ship en route between France and the East to the Île de France court made that island a convenient stopping point for legal services as well as the ship repairs that initially encouraged Querangal to stop there. It also made sense for people who were from a particular colony to be heard in that colony's courts if possible. Chaux was from Île Bourbon and Salavy was the nephew of the Île de France chief munitions guard (*garde-magasin général*), so they both had relations and other contacts in the Mascarenes.³⁹² Courts like the Mascarene conseils might have appeared to be isolated from the more contiguous *parlements* in France, but they were very strategically located for traders, ship captains, and other imperial participants. French subjects were drawn into the choreography of justice and specifically into conseil courtrooms by events, like Salavy's murder of Chaux, that required adjudication even if those subjects happened to be navigating the Indian Ocean far away from metropolitan France.

Ship captains like Querangal traveled across large distances empty of French jurisdiction in order to find judicial resorts like the Île de France conseil, but French subjects also participated in the choreography of justice from a distance through letters. Correspondence among agents in various judicial entrepôts, or interjudicial correspondence, was a critical component of France's global legal geography because it

³⁹¹ Later, the case was appealed to the metropole and in 1778 Salavy was granted a pardon as *lettres de grâce*. ANOM COL A 20 F° 219, 19 September 1778.

³⁹² ANOM COL E 77, Louis Georges de Chaux. So did the wife: Chaux's wife was the daughter of an accountant (*caissier*) in Île Bourbon.

helped conseil members and court participants move from one part of the legal geography to others, like from lower courts to courts of appeal or from an inappropriate jurisdiction to an appropriate one.

This pattern in which interjudicial correspondence worked as a lever for court users was particularly true in the Indian Ocean, where the Mascarenes formed strategic trading entrepôts for the French subjects operating around the entire Indian Ocean littoral. Conseils often dealt with cases brought to them from afar as ships arrived full of passengers who brought their problems to the conseils as French jurisdictions. On 5 March 1729, the French ship the *Jason* arrived in Île de France from China and appealed to the conseil for help. They had gone the previous four days without a “single pound of flour nor a single grain of rice” despite the great economy they had kept with their food on the voyage and they had despaired of starving on the voyage. They came from China via Pondichéry, where a famine was going on, and they reported that many passengers had abandoned their plantations to go live in the woods and hunt. Though this was not a specifically judicial issue, the conseil deliberated upon their case and responded by stating that they hoped that a ship called l'*Aleyon* would arrive soon from the East Indies. The conseil members planned to send it on to Madagascar to collect more slaves and rice, which could be used to aid the passengers of the *Jason*. They also noted that since Île Bourbon was closer than Madagascar, they would appeal to the Île Bourbon conseil for help. The conseil doubted that the new arrivals were well-equipped to start new plantations in Île de France and contribute to the island’s economy, but they conseillers noted that the *Jason*’s passengers could form a useful workforce in the meantime to harvest coffee and help clear land (though the latter was considered a task too laborious

for them). The conseil decided that the arrivals would be sent to cultivate some newly transplanted coffee plants while they waited for provisions to arrive.³⁹³

The choreography of justice was most intensely associated with the seasonal meetings of the conseils in colonial capitals as discussed in chapter one, but it was reinforced year-round by a constant stream of correspondence between colonial and metropolitan residents that often included the exchange of legal knowledge and personal appeals for legal aid, like the request from the passengers on the *Jason*. Informal types of legal action complemented this process centered on the conseils by forming relationships between people at each location in the legal geography. Some litigants sought to bypass the courts, especially the conseils, by writing directly to metropolitan administrators.

Though often intended to undermine (or eliminate) the conseils from the choreography of justice, this correspondence actually helped convey knowledge from one judicial entrepôt to another, binding the whole apparatus together. Interjudicial correspondence could also help litigants identify alternate methods of moving within the choreography, without necessarily having to go through the judicial processes required for formal legal action in the conseils. While France's consolidating imperial structure included many paradoxes, especially in the form of overlapping jurisdictions, correspondence among individual conseil members and administrators acted as a sort of glue that held the legal geography of France's *ancien régime* empire together.

As court users and administrators worked through litigation and other kinds of court proceedings in the conseils, interjudicial correspondence helped the conseils and their participants interact with other jurisdictions and officials. A third kind of court practice, metropolitan responses to conseil decisions, kept the former two practices in

³⁹³ ANOM FM F/3/210 Île de France, 5 March 1729, 57-9. Though the *Aleyon* apparently did not arrive as expected, a small ship, the *Mars*, left Île de France on 24 November 1728 to get help from Île Bourbon.

check under the authority of the king and his ministers. Magdeleine François was a free woman of color who lived on the English Caribbean island of Dominica, less than thirty miles north of Martinique. In 1776, she came to Martinique with her two children and stayed with a widow innkeeper named Blot for three days before returning home to Dominica. However, a few days later a man named Rivière visited Blot to claim Magdeleine François as his slave. Upon finding that Magdeleine François had already left, he returned a few months later, with an affidavit from Martinique's lower court at Trinité that cited Magdeleine François as a runaway. He then sued Blot for harboring and aiding a fugitive slave. The case was heard in the lower court, appealed to the Martinican conseil, and finally contested in metropolitan France. For the duration of the case, Blot maintained her innocence and upheld Magdeleine François's status as a free woman of color. Likewise, Rivière was determined to prove that Magdeleine François was actually his slave, forming a conflict that traversed the Atlantic dimensions of the legal geography of France's overseas empire. Throughout the case, Blot and Rivière demonstrated their knowledge of legal processes. Rivière knew that a registered complaint of *marronage* (running away) counted as legal evidence. Likewise, Blot's appeal to the metropole showed that court participants who understood judicial processes—even women—could negotiate against adverse decisions. Their actions outlined steps in a choreography of justice that took place from the most local of jurisdictions—rural courts like Trinité—to the highest levels of French jurisprudence—in the king's councils.³⁹⁴

³⁹⁴ ANOM COL E 35, Blot.

	Martinique	Guadeloupe	Île de France	Île Bourbon
Total	39	29	24	9
1723		2		
1724	3 ³⁹⁵	2		
1725		2		
1726	1+ ³⁹⁶			
1727		2		
1728		2		
1729		2		
1730		1		
1731	1	1		
1743		1		
1744	2			
1745		1		
1746	1			
1751		1		
1752				2
1755	2	1		
1756	2			
1757	2			
1759	1			
1760	1			
1764	2			
1765	2			
1766	1	1		
1767		2		
1768			10 ³⁹⁷	
1769		1		1
1770	2		1 ³⁹⁸	
1771	3			
1772		1	2	1
1773	2		3 ³⁹⁹	
1774		1		1
1775	1		5 ⁴⁰⁰	2
1776	2	1	1	2
1777	2	2		
1778	2		1	
1779	4	2	1	

Table 3: Metropolitan Responses to Conseil Decisions, by Year⁴⁰¹

³⁹⁵ At least. One response quashed an unnamed number of judgments.

³⁹⁶ Ruling does not specify how many edicts were overturned, just that all edicts related to a particular case where quashed.

³⁹⁷ This large number likely reflects the changeover to royal control in 1767. Before that, the Mascarenes were administered by the Compagnie des Indes, though they had conseils.

³⁹⁸ Evoked the king's council (*conseil du roi*) for definitive judgment.

³⁹⁹ Four rulings modified conseil rulings, but did not quash them outright. The other ruling was a pardon.

⁴⁰⁰ At least four (last decision does not specify exactly how many were quashed).

	Martinique	Guadeloupe	Île de France	Île Bourbon
Total	41	31	22	9
Cassation (quashed conseil decision)	19	18	17	7
Pardon/Amnesty	15 ⁴⁰²	6	3	1
Sent to another jurisdiction	5	5	1	0
Instructions ⁴⁰³	2	2	1	1

Table 4: Metropolitan Responses to Conseil Decisions, by Response⁴⁰⁴

Though few conseil decisions made it all the way to the king's councils in France on appeal, the reaction of metropolitan officials to conseil decisions constrained the authority of the conseils. Those that did could be quashed (in a ruling known as a *cassation*), modified, or returned (as a *renvoie*) to a colonial jurisdiction for final judgment, as could court rulings in metropolitan jurisdictions like the parlements.⁴⁰⁵ Out

⁴⁰¹ Compiled from ANOM COL Série A, Actes du pouvoir souverain, Arrêts, déclarations, édits et ordonnances concernant les colonies. Count is of individual conseil decisions quashed or otherwise modified (including pardons), not the number of metropolitan cassations issued (which would be a lower count as cassations were sometimes bundled). Metropolitan decisions in responses to cases that include lower court and conseil rulings are counted as one case. The fact that the earliest decisions is only in 1723 most likely points to a substantial loss of documentation before 1723 and this data likely reflects losses after 1723, too.

⁴⁰² However, five of these orders concerned one person, Joseph François Desvergers. Ibid.

⁴⁰³ E.g. Letters patent. Includes instructions upholding conseil decisions.

⁴⁰⁴ Compiled from ANOM COL Série A, Actes du pouvoir souverain, Arrêts, déclarations, édits et ordonnances concernant les colonies. In future research, I hope to cross reference these numbers with a better accounting of conseil cases in order to discern what percentage of conseil cases made it to metropolitan courts for appeal. Note that totals for each colony in this table and the previous table do not always match because some decisions were issued in bundles (and have been counted together for Table 3, Metropolitan Responses to Conseil Decisions, by Year) while others were issued individually (and have been separated by response type here).

⁴⁰⁵ For an account of royal cassations that situates them in reference to parliamentary politics during the reign of Louis XIV, see Albert N. Hamscher, "Parlements and Litigants at the King's Councils During the Personal Rule of Louis XIV: The Example of *Cassation*" in *Society and Institutions in Early Modern France*, edited by Mack P. Holt (Athens, GA: University of Georgia Press, 1991), 190-222.

of all of the laws and rulings the royal government issued, it quashed or returned 23% of the ones for Martinique; 26% of those issued for the Mascarenes.⁴⁰⁶ Smaller percentages told conseils to modify their rulings (siding against the conseil and with those who appealed). Only one royal ruling for the Mascarenes required the conseil (this one in Île Bourbon) to rule definitively. In that case, the royal government told the conseil that it had to work out the details of a contested estate.⁴⁰⁷

Metropolitan jurisdictions also reviewed criminal cases. Their decisions to reduce sentences signals a flexibility in the choreography of justice in which metropolitan administrators were willing to take a step backwards and allow defendants to push their claims forward within the legal geography after having been convicted. The Marine and king's councils could issue pardons or amnesty to accused criminals (*grâce et amnisties*) and revise what they considered to be harsh penalties. Though banishment was usually permanent, a few court users successfully appealed their cases to France for crimes ranging from debt to murder. In 1778, a sometime resident of Martinique named Jacques Jacart was pardoned for having killed a man in the course of a fight in 1767.⁴⁰⁸ Having already spent eleven years outside of France (more than Roger's nine-year banishment for fraud discussed above), metropolitan administrators decided that Jacart had adequately paid for his crime. The same year, the metropolitan government also "recalled" a Martinican tanner named François Boutonnet from his banishment, after having been sentenced by a judge in Saint-Pierre Martinique's lower court for an

⁴⁰⁶ There were 24 *cassations/renvoies* (out of a total of 196 *arrêts*) for Martinique and 21 *cassations/renvoies* (out of a total of 82 *arrêts*) for the Mascarenes. ANOM COL Série A, Arrêts, déclarations, édits et ordonnances concernant les colonies (1666/1779).

⁴⁰⁷ ANOM COL A 5 F° 195, 16 February 1752. Quashing an Île Bourbon conseil decision from 17 June 1750.

⁴⁰⁸ ANOM COL A 16 F° 221, 6 February 1778.

outstanding debt that he had refused to pay.⁴⁰⁹ Though most appealed murder cases involved white soldiers and planters, a few of these cases concerned the conviction of white nonelites for killing slaves, like the case of François Bringolo, a worker who in 1774 killed a slave named Christophe in Île Bourbon.⁴¹⁰ Like Boutonnet, the Martinican tanner, Bringolo lacked rank as a worker—in contrast to more elite litigants like the Guadeloupean planter Despert or Île de France greffier Lousteau—but he still achieved a pardon from a metropolitan resort.

Pardons constituted a substantial proportion of metropolitan decisions on conseil cases. Out of forty metropolitan responses to Martinican conseil decisions, fourteen granted pardon or amnesty to convicted subjects. However, four of these pardons concerned one person whose case continued for many years, so a more accurate count is eleven out of forty decisions, or twenty-eight percent. Guadeloupe, Île de France, and Île Bourbon had even smaller percentages of cases where metropolitan administrators granted pardons, nineteen, fourteen, and eleven percent respectively. Most likely, the disproportionate rate of amnesty in Martinique can be attributed to its much more direct and longstanding relationship with the metropole, as well as the political clout held by its increasingly politicized creole planter class, which had many advocates in France. With these connections, defendants who were convicted in the Martinican conseil would have had easier access to metropolitan courts of appeal, a great contrast especially to the more isolated Île Bourbon.⁴¹¹

⁴⁰⁹ ANOM COL A 16 F° 299, 3 October 1778. Boutonnet had originally been sentenced in 1776. See also the recall from banishment of Dupuy, a Martinican surgeon, in 1779 for a murder committed during a fight in 1771. ANOM COL A 17 F° 191, 30 October 1779.

⁴¹⁰ ANOM COL A 19 F° 321, 22 December 1775.

⁴¹¹ See Table 4, Metropolitan Responses to Conseil Decisions, by Response.

Interjudicial correspondence created a force that drew court users into the choreography of justice by connecting them to other court users and judicial entrepôts. Likewise, appeals to metropolitan courts and their decisions to rule or return these cases created a cycle of court cases as they circulated through the legal geography of France's overseas empire. However, other forces within this system, especially banishment, pushed court users outside of these dynamics and the entire legal geography. Court magistrates regulated which French subjects could participate in the choreography of justice through their power to banish people to the galleys and from French territories. In 1787, the Saint-Pierre, Martinique *sénéchaussée*⁴¹² convicted Pierre Roger, captain of a ship from Bordeaux, of *escroquerie*, a crime defined in the eighteenth century as theft through guile (a modern translation might be "swindling"). Throughout the eighteenth century, one could say proverbially of a parasite that "He swindles [*escroque*] a dinner."⁴¹³ Roger had claimed a letter that did not belong to him on the resemblance of his name to the intended recipient. The court interpreted this act as a malicious and fraudulent crime, even though it appears that Roger only stole the one letter. They sentenced Roger to a banishment from Martinique for nine years, making it clear that local administrators saw his fraud as a serious crime that could only be remedied by dismissing Roger from Martinican society. This kind of banishment was intended to prevent Roger, whether as himself or in the disguise of another, from participating in Martinican society.⁴¹⁴ Court cases that resulted in banishment or the galleys for court

⁴¹² A mid-level court between the local jurisdiction and the conseil. See Figure 2, Judicial Entrepôts in Selected Colonies.

⁴¹³ In fact, this must have been a widespread expression because it was cited in the entries for the verb "escroquer" in the first, fourth, and fifth editions of the *Dictionnaire de l'Académie française* (1694, 1762, 1798). ARTFL, Dictionnaires d'autrefois, <http://artfl-project.uchicago.edu/node/17>. Accessed 17 April 2012.

⁴¹⁴ ANOM COL E 356, Pierre Roger. This banishment was also more limited than other versions of the punishment, which often restricted individuals from entire areas of French territory (e.g. all French colonies

users were designed to treat social ills, like Roger's fraud, in the judicial heart of France's *ancien régime* empire—the conseils—by amputating convicted perpetrators of those ills from French society.

Like banishment, the galleys were a punishment meant to remove a convicted person from colonial society entirely, allowing the civil order to be restored by cutting that person out of the community. Both sentences implicitly recognized that a social order in which a person was out of step (by committing a crime) required the person's removal from the community through a choreography of justice that pushed them outside these patterns. In 1781 in Guadeloupe, a man named Dumas was convicted for having kidnapped (*enlevé*) a slave from the plantation of a Sieur Clairfontaine, which was managed by a Sieur Lamothe. Dumas sold the slave to Lamothe in the Guadeloupean town of Pointe-à-Pitre, effectively transferring ownership of the slave from the planter to his overseer. The case originated in the Pointe-à-Pitre *sénéchaussée* (the jurisdiction just below the conseil), where magistrates condemned Dumas to the galleys for three years and had him branded with the letters "G.A.L." for "galleys."⁴¹⁵ Dumas appealed his case to the Guadeloupe conseil, which confirmed the lower court's ruling after having done their own interrogation of him. Dumas ended up on a small ship called the *Union*, which was part of a convoy of ships headed back across the Atlantic, escorted by the navy.⁴¹⁶

or all of metropolitan France). For a more detailed treatment of this kind of fraud, though in seventeenth-century France, see Jeffrey S. Ravel, *The Would-be Commoner: a Tale of Deception, Murder, and Justice in Seventeenth-century France* (Boston: Houghton Mifflin, 2008).

⁴¹⁵ Galleys were (like banishment in general) frequently a punishment given for serious financial crimes, like different kinds of fraud (*escroquerie*, swindling, and *faux*, or general fraud), while fines were most often given as punishments for less serious financial offenses. However, unlike banishment, the galleys were considered a death sentence. Galley sentences were usually three years, unlike the five-year sentences common for banishment, but people who were sent to the galleys did not expect to live through their experiences.

⁴¹⁶ ANOM COL E 153, Dumas. Not related to the Governor Dumas of Île de France discussed in chapters two and four.

The physical nature of the punishment created an indelible reminder of Dumas's crime that signaled the conseil's power to sanction his body and his conditions, underscoring the degree to which fraudulent activity would be punished. Dumas's case and other colonial cases of banishment showed that colonial magistrates were willing to remove people who committed fraud from the legal geography of France's overseas empire, and by extension the choreography of justice within it.

Galleys were embedded in the same system as the courts because they constituted a considerable part of the Marine's administration, which also included naval defenses and the conseils supérieurs. Historians have characterized the galleys as floating prisons, which essentially created larger containers than the small prison cells that were usually a part of the *palais de justice* complex in each colony that contained the conseils.⁴¹⁷ Banishment to the galleys was a specific way to remove colonial subjects from society that prevented them from having any access to the choreography of justice by immobilizing them as subjects and therefore removing the possibility of appeal or other moves within France's legal geography. In extreme cases, non-slave defendants could be banished or sentenced to the galleys, usually for financial crimes that were considered a threat to the civil order like fraud and counterfeiting. In these cases, like the La Bouralière case discussed above, a convicted person was explicitly placed outside the legal protection afforded to French subjects, especially under the jurisdiction of French courts (whether metropolitan or colonial).

⁴¹⁷ For more on the prisons in the *palais de justice*, see chapter one. According to Paul Bamford, in 1663, approximately half of the navy budget went to the galley fleet, which was mostly made up of obsolete warships. By 1690 there were 50 galleys employing 15,000 men. Paul Bamford, *Fighting Ships and Prisons: The Mediterranean Galleys of France in the Age of Louis XIV* (Minneapolis: University of Minnesota Press, 1973). For a comprehensive study of the men who filled the galleys, see André Zysberg, *Les galériens: vies et destins de 60 000 forçats sur les galères de France 1680-1748* (Paris: Éditions du Seuil, 1987).

The movement of defendants like Dumas from colonial judicial entrepôts to the galleys or non-French territories was mirrored by and connected to similar processes within metropolitan France, in which similar defendants were pushed out of metropolitan judicial entrepôts out via the galleys or banishment—sometimes to the colonies. In France, people were sent to the colonies as a punishment worse than prison but better than death. In 1770, the curate, syndic (local representative), and inhabitants of the Parisian parish and jurisdiction (*élection*) of Nôtre Dame de Tavernay got together and petitioned the minister of the Marine, the Duc de Praslin, to remove Germain Barthélemy from their community. Barthélemy was a native of this parish who had been a militia soldier from 1754 to 1763, when been discharged from the military. Since then, he had stayed in Taverny to start a new life (“cultiver son bien”). Within the last year, however, he had decided to retire to Paris where he had quickly taken up with unsavory women (“femmes de mauvaise vie”) and had been arrested and taken to the criminal court at Grand Châtelet on 7 September 1769 on charges of having stolen some artichokes. Barthélemy was only around thirty years old (five feet, four thumbs tall), so the parish residents thought that he would be quite able to serve the king in the islands. They also implied that several other natives of their parish already served the lord of Taverny, the Comte and Comtesse de Longaulnay, so they hoped that their honest conduct might recommend Barthélemy for a position, relying on Praslin’s “zeal for the public good” to persuade him to send Barthélemy from Châtelet to the colonies.⁴¹⁸ The quirky details included in this plea—including artichokes and Barthélemy’s height—imply that it was put together by a group of eager parish citizens who hoped to clear at least one disorderly

⁴¹⁸ This concept was pervasive throughout France and its empire in the eighteenth century and implied that French administrators governed (and had a responsibility to make sure they governed) for the collective benefit for French subjects. This concept has been explained in the colonial context in more depth in Alexandre Dubé, “Les biens publics: Culture politique de la Louisiane française 1730-1770.” (PhD Diss., McGill University, 2009).

neighbor from their community. As the bottom of the petition revealed, however, it was Barthélemy's own relatives who had sought his exile to the colonies. Twelve parish residents signed the petition, including two sisters, a brother-in-law and some first cousins, in addition to the parish curate.⁴¹⁹ These family members recognized Barthélemy's crimes as a chronic pattern which would create havoc on their community, so they sought the best solution that they could think of: removing him from their community.

This was not an isolated incident, however, as many early modern families sought to banish disorderly relatives to the colonies. In 1764, the family of François Jacques Valframbert in France had asked the Marine to send him to la Désirade, a small island dependency of Guadeloupe because he was a "bad subject" ("mauvais sujet").⁴²⁰ The Marine's report explained that the family had written to a M. de Levigney in Alençon to find out François Jacques's whereabouts and had learned that he was a "dissipated libertine" who had gone down a "bad path" in the pursuit of money. De Levigney reported that he was now being held by a Catholic relief organization, the Réligeux de la Charité, in Pontorson. The family must have believed that all options within France had been exhausted because they next wrote to a M. Bestin to act on their behalf and have the charity help organize Valframbert's relocation to the Antilles. Valframbert would travel via a prison in Rochefort, a port town mostly known for its military bases, to La Désirade, under the supervision of a military commander. The family was even willing to pay the two-hundred livre cost of transporting Valframbert if it would ensure his exile

⁴¹⁹ ANOM COL E 203, Barthélemy Germain. Unfortunately this petition does not state whether or not Barthélemy was actually sent to the islands.

⁴²⁰ La Désirade seems to have been a designated location for unruly subjects during this period. See also the case of Jacques Louis Bourlier, sent from Cayenne to La Désirade circa 1763 for "mauvaise conduite," as well as other cases cited below. ANOM COL E 48, Jacques Louis Bourlier.

from France.⁴²¹ The choreography of justice thus pushed people outside of French jurisdictions in both metropolitan and colonial contexts in addition to incorporating subjects into the choreography through judicial activities like witnessing and litigation.⁴²²

Judicial practices anchored in the conseils supérieurs were amplified and integrated into the global choreography of justice within France's early modern legal regime through interjudicial correspondence and metropolitan appeals and responses. Interjudicial correspondence allowed court users and administrators to communicate with other jurisdictions and to transfer their cases from one site to another. Travelers between French territories, like the ship captain Querangal, also sought out the conseils for judicial services through interjudicial correspondence. Appeals of cases through official channels also helped these court users move from one court to another, especially from the colonial conseils to metropolitan courts in France. When court cases arrived in France, metropolitan administrators could choose to rule definitively on cases or to send them back out to the overseas conseils. The reactions of metropolitan administrators to conseil cases drew metropolitan jurisdictions into the colonial choreography of justice to create an empire-wide movement of cases and court users. However, families and court administrators defined who could participate within this choreography and managed the boundaries of this legal geography when they chose to banish some court users, like Dumas and Barthélemy, from French territory or to the galleys. These dynamics, driven from both metropolitan and colonial France, increasingly bound *ancien régime* France into a unified legal regime in which state-building processes like legal development

⁴²¹ ANOM COL E 382, François Jacques Valframbert.

⁴²² For more on how court participants who were kicked out of this choreography and, by extension, French jurisdiction, could work their way back in, see chapter four.

occurred equally at the geographic center and periphery of France's *ancien régime* empire.

CONCLUSION

French subjects accessed *ancien régime* legal culture by participating in a choreography of justice made up primarily of the three kinds of court practices surveyed in this chapter: conseil practices, interjudicial correspondence, and metropolitan responses. Interjudicial correspondence carried legal knowledge across linear trajectories between a few correspondents, but attendance at court proceedings constituted many different relationships all at the same time so legal knowledge could be created, contested, and transmitted simultaneously within the space of the courtroom. When court sentences were granted, colonial residents learned about how courts made their decisions and what kinds of issues magistrates thought were important. Colonial residents could interpret this information to determine which steps to take within the choreography of justice.

Court cases from the conseils supérieurs afford access to the little-known history of France's *ancien régime* empire, especially the ways in which French subjects navigated the legal geography of this empire as they sought justice. French subjects relied upon judicial entrepôts, especially the conseils, in both colonial and metropolitan contexts in order to ensure claims to status and wealth. They recognized the conseils as valid legal forums in which decisions were, on the whole, accepted by both colonial and metropolitan residents, which created a consistency in which decisions and legal evidence from the conseil greffes could be carried across jurisdictional boundaries and still be seen as legitimate. On a local level, colonial residents like the Martinican artisans who brought blasphemy and theft charges against La Bouralière sought to work out community disputes about proper behavior in the conseils. Court users also took local disputes, like

over property, from the conseils to metropolitan jurisdictions, as Despert in Guadeloupe and Vanthenel in Île de France both did. In criminal cases, defendants like the free woman of color Marie Rose and slave Thelemaque appealed their cases to seek lesser punishments. Some, like Dumas and Germain Barthélemy, were cut out of the French imperial community when they were banished from both the colonies and metropole. Many French subjects, even after they had died, entered conseil proceedings in vacant successions like Labour.

However, court participants and administrators also needed ways to move cases from one judicial entrepôt to another, so they requested aid and shared information via letters that circulated between and among these entrepôts, forming a web of interjudicial correspondence. This correspondence reinforced, rather than replaced, connections among French subjects in person. Like Madame Blot, many subjects changed partners until they found a forum that would rule favorably for them. Others, like La Bouralière and Roger, could choose the *wrong* steps and find themselves kicked out of the judicial choreography, a problem examined in much more detail in the next chapter. While interjudicial correspondence could provide the necessary openings to high court officials or well-connected patrons, it never replaced the movement of people in and out of the settings of court proceedings. Instead, interjudicial correspondence amplified relationships among local elites and provided a way for court users in different judicial entrepôts around the globe to overcome the spaces between them.

Chapter Four

Contesting Jurisdiction: Between “Île Deserte” and “Île de France”

*“There is going to be a great misfortune, the creoles [bequets]
are going to make an uprising [gaoulé] like the blacks.”*
- Cornette de Saint-Cyr, 1718⁴²³

*“All I could see around the harbour was a rugged coast,
stripped of trees and covered in yellow grass...
We learned from the pilot that things on the island were ablaze,
with two warring factions headed by the intendant and
by the governor, and that there was only paper money.”*
- Jacques-Henri Bernardin de Saint-Pierre, 1768⁴²⁴

On 5 March 1768, Jean André de Ribes dashed off a letter to the minister of the Marine in Paris as he waited to board a ship from Île de France (now Île de France in the Indian Ocean) to an unknown destination.⁴²⁵ Ribes was the chief prosecutor for the island’s highest court, the *conseil supérieur*, and he had infuriated the governor, Jean Daniel Dumas, by disagreeing with him over whether court members were required to attend services at the parish church. In response, Dumas became so angered that he put Ribes under house arrest and then banished him from the island. Dumas forced Ribes and another court official to board a ship during a season of bad weather, headed toward a deserted island, as Ribes wrote in his frantic letter. Ribes was left to wander in a no man’s land between Île de France (as the region surrounding Paris is known) and Île de

⁴²³ “Il va arriver un grand malheur, les bequets vont faire un gaoulet comme les nègres.” Letter from Cornette de Saint-Cyr, Cited in Jacques Petitjean Roget, *Le Gaoulé: La révolte de la Martinique en 1717* (Fort de France: Société d'histoire de la Martinique, 1966), 492.

⁴²⁴ Jacques-Henri Bernardin de Saint-Pierre, *Journey to Mauritius*, Translated with an introduction and notes by Jason Wilson (Oxford: Signal Books, [1773] 2002), 92. Letter 5 [1768].

⁴²⁵ During this time, French colonial government was organized under the navy, or Ministry of the Marine, even though courts like the *conseils supérieurs* were analogous to the *parlements*, which had civil and criminal jurisdiction and were not military courts.

France, stopping off only at an “île deserte.”⁴²⁶ Ribes sought the aid of metropolitan authorities, but via his personal connections in the Ministry of the Marine and royal court rather than through traditional judicial methods. Tensions within individual units of France’s overseas legal geography could challenge the cohesion of the whole as much as the physical distances that separated each conseil within the larger judicial geography. However, knowledgeable subjects like Ribes used tools that complemented the conseils, like interjudicial correspondence and advocacy through local assemblies, when conflict within the conseils made traditional judicial methods unfeasible. Though the French colonial patterns of justice centered on the conseils, Ribes’s path from the Île de France to the deserted island and finally to France showed that the choreography of justice acted out in the conseils was linked into an empire-wide choreography that included the metropole as well as the colonies, even if there were empty spaces in between.⁴²⁷

In Martinique, a similarly dramatic event known as the Gaoulé had occurred in 1717, which had a similar cause, conflict among conseil members and administrators, and outcome, banishment.⁴²⁸ A crisis had erupted over longstanding provisioning shortages on the island, but so colonial residents had resorted to illicit trade with Dutch, English, and Spanish neighbors.⁴²⁹ When a new governor and intendant had arrived in Martinique, with instructions to stop the illegal trade, they were met by a restive assembly of notables who had overtaken the conseil supérieur. Skeptical of the new administrators’ intent, the

⁴²⁶ ANOM COL E 119, Jean André de Ribes, Letter to Praslin, 5 March 1768. For geographical context, see Map 1, The Conseils Supérieurs and Map 5, The Indian Ocean Region, with Mascarene Islands Inset.

⁴²⁷ For more on standard judicial practices in the conseils, especially litigation, conceptualized as a “choreography of justice” acted out by many different participants, see chapter three.

⁴²⁸ I capitalize the term “gaoulé” when referring to the events of 1717; when uncapitalized, I refer to the wider usage of the term both before and after 1717.

⁴²⁹ For geographic context, see Map 4, Caribbean Detail of the Atlantic Region and Map 3, The Atlantic Ocean Region.

notables quickly packed them onto a boat headed back to France and sent a packet of evidence to the Marine ministers explaining their actions. As in the Dumas affair, internal conflict within the conseil (which included the administrators and magistrates) prompted the employment of complementary tools like local assemblies and interjudicial correspondence. Like Ribes, the administrators were not allowed to stay within a colonial jurisdiction, but instead forced back out of it into a watery space that lay in between. France's royal jurisdictions were not coterminous, then, but were instead fraught with holes through which French subjects could be pushed. However, once caught outside French jurisdiction, banished subjects sought to work their way back in so that they could access legal forums like the conseils and royal councils.

These cases raise several questions about the ways in which imperial structures, especially courts, could be damaged and then restored and how other imperial structures both above and below these intermediary judicial entrepôts could temporarily fill a power vacuum created by a conseil in crisis. How did pressure from local and metropolitan actors invested in the legal system impact the way courts functioned? What happened when personal conflicts, local revolts, or unexpected circumstances pushed people like Ribes out of French legal circuits, forcing them seek alternative forums?

Conseils supérieurs were the critical forums in which colonial residents worked out disputes over matters like property lines, estates, and enslaved or free status but they were also important spaces in which French subjects from across a spectrum of statuses worked out ideas about how the empire as a whole should run. Most of the time, cases could be dealt with in a seasonal rhythm of monthly court meetings.⁴³⁰ When extraordinary local and imperial pressures converged on the conseils, they became key sites for debates about legal and political power and thus attracted a range of actors (local

⁴³⁰ For more on these processes, see chapter three.

and metropolitan, elite and nonelite) who sought to manipulate these contentions to their own ends. The cases of Ribes and the Gaoulé indicate that extraordinary circumstances like food crises and personal disputes could put unsustainable pressure on the conseils and cripple the entire legal machinery and leave some, like Ribes and the Martinican administrators, stranded between “îles” of France. However, the actions of local elites in both Île de France and Martinique show that the conseils were enmeshed in a legal culture that included informal local assemblies and transimperial correspondence networks. These coexisted with the conseils during times of peace, but could function in place of the conseils during times of conflict until the conseils could be restored.

While previous chapters have explored the conseils as judicial entrepôts, or sites for legal negotiation that brought together a range of colonial participants in each colony’s *palais de justice* (or court building), this chapter looks at the relationships between the conseils and the empty spaces surrounding them from which French law and jurisdiction were absent. Both the Antilles and Mascarenes experienced periods of local resistance to imperial authority in the form of revolts by local elites in the eras of colonization. In both places, local controversies were concentrated in the forums of the conseils supérieurs as debates about the validity and appropriateness of colonial rule. Conflicts usually erupted as personal contentions: Dumas versus Ribes, coalition of Martinican elites versus new administrators. However, they often stemmed from longstanding feuds about how to deal with colonial problems like provisioning and defense. Assumptions about jurisdictions and legal practices were revealed in cases like the Gaoulé and Ribes controversy precisely because they were moments in which the colonial legal machinery broke down. The Gaoulé and Dumas debacle also illustrate that these forums were complemented by another space—the ocean—into which the losers of colonial fights could be thrown, set adrift from the protection of French law as

maintained by both colonial conseils and the metropolitan government in France. These moments exposed the pathology of France's *ancien régime* empire, but its legal geography proved to be resilient as subjects employed local assemblies and interjudicial correspondence as antidotes to crises in the conseils.

LE GAOULÉ, 1717

The 1717 revolt in Martinique known as the “Gaoulé” marked the successful cohesion of a creole elite against metropolitan administrators. It also demonstrated that local elites were not tied to the decisions of the governor and intendant as the sole leaders of the colony. Instead, the colonial order forged in and maintained by the conseil supérieur could be ripped apart across, not just within, the hierarchy of elites. Jacques Petitjean Roget has argued that the Gaoulé happened as a result of a conjuncture of events, drawing on the Annaliste concept, but he neglects the judicial context in which the revolt occurred. A subsistence crisis and weakened defenses combined with recalcitrance—whether real or perceived—on the part of the administrators in charge created a perfect storm in which the governor and intendant became vulnerable to these events rather than at the helm of them.⁴³¹ However, the eventual banishment of the administrators, La Varenne and Ricouart, from Martinique was a rejection of judicial negotiation within the conseil and between the colony and Ministry of the Marine. Instead, local elites chose to push the administrators outside French jurisdiction entirely by banishing them. This challenged the constitution of the French empire itself and put creole elites in a position to determine what the modified structure would be. Gaoulé participants eventually won the pardon of the king for their actions (if not an overturning

⁴³¹ The definitive study of this uprising is Petitjean Roget, *Le Gaoulé*, which relies on a fairly encyclopedic reading of material from the Archives Nationales d’Outre-Mer, especially Série A (actes du pouvoir souverain) and Série C (correspondance à l’arrivée). However, Petitjean Roget underplays the impact of the banishment itself and the significance of the conseil as a center of colonial and metropolitan tensions.

of the legislation that prompted it) and thereby won an argument for local authority that was centered on the conseils, but shared by associated assemblies of local elites.

The Gaoulé was focused on Martinique and the specific incident of Ricouart and La Varenne's capture, but the conflict had regional dimensions that signaled a more widespread discontent with royal authority among Antillean planters. It had been precipitated by an incident on Guadeloupe in 1715. Following the seizure of an English ship as a prize on the Guadeloupean island dependencies of Les Saintes, officials found evidence that some Guadeloupeans had been conducting illegal trade with it. The neighborhood's military commander, Pierre Gilbert de Crapado, sent four Guadeloupeans to Martinique to be put in the nearest prison, then fined, but local inhabitants resented the commander's actions.⁴³² A group of nearly four hundred of them went to the commander's house to petition him for a reprieve, citing their misery due to a food crisis as the reason for illegal trading with the English. Finally, they decided on a plan to present the petition to the head of the regiment and reassured the commander of their loyalty by yelling "Vive le Roi" five times.⁴³³ Here and in Martinique, a pattern was

⁴³² The fact that Guadeloupe appears to have lacked its own prison indicates a more longstanding dependence on Martinique for judicial and executive matters in practice, not just an acknowledgement of Martinique's designation as the regional government for the Lesser Antilles throughout most of the eighteenth century. In 1714, Martinique had become the regional headquarters for the islands of Guadeloupe, Saint Lucia, and Grenada, while Saint-Domingue had become a separate administrative region.

⁴³³ Petitjean Roget, *Le Gaoulé*, 253. As in the Gaoulé itself and the Ribes case below, petitions were critical to local protests. The Guadeloupeans also drafted a petition "in the name of all the inhabitants of Guadeloupe" that reasserted their loyalty to the French crown, pointing out that they had recently participated in the defense of the island during a recent war and were always ready to follow orders and laws that they received from France. However, for the last three years they had lacked sufficient supplies of beef, cloth, and other provisions from France, so they requested permission to seek sources elsewhere. They also wanted permission to do as they saw fit with the supplies and to pay enslaved Africans (i.e. their owners) ten *sous* per day when they were working on the colony's infrastructure ("travaux du Roi") and to be reimbursed if they died on the job. Imperial construction projects, managed by the governor and military engineers, were a continual source of conflict between administrators and planters, who resented having their slaves taken away to build roads, irrigation canals, etc. Guillaume Dorange, a participant in the Gaoulé, had a notarized request deposited with the Martinique conseil greffe in February 1728, requesting

established in which colonial residents repeated the cry of loyalty to the king while simultaneously demanding different conditions.

In the meantime, both Martinique and Guadeloupe awaited the arrival of a new governor and intendant, who was especially needed to preside over the Martinique conseil. On 3 May 1717, the intendant Ricouart finally arrived in Fort Royal, Martinique, and met with the conseil in the presence of the governor general Feuquières as well as the conseil members and greffier.⁴³⁴ The conseil registered a royal edict from 18 November 1716 concerning new currency valuation.⁴³⁵ He and La Varenne also made sure to register the new laws against foreign commerce, both of which matters were considered essential to preserving and protecting the island's valuable sugar production for France.⁴³⁶ Then, they set out on a tour to see the island's various militias and administrative districts (*quartiers*), both to check on fortifications and to get a sense for the state of local unrest. First they traveled south from Fort-Royal around the bay of Cul de Sac. 16 May 1717 was Pentecost, so they stopped at a Jesuit chapel in Cul de Sac à Vache before proceeding south to the Ilet à Ramiers across from Fort Royal, a favorite port for illicit traders that they planned to replace with a military base.⁴³⁷ Next they traveled across some low mountains to the somewhat isolated southern coast. Near the shore, they were greeted by the tailor-turned-planter Bourgeot who held a dinner in their honor at his plantation house. The terrace of Bourgeot's plantation house looked out onto the water towards the south, with the rock of Le Diamant jutting out in the near distance. The island

exemption from the *corvée* (road tax) for him and his family, citing his military service for the French against Caribs and English as meriting the privilege. ANOM COL E 135, Guillaume Dorange.

⁴³⁴ Since they had the governor-general, they did not need La Varenne's presence at the conseil meeting.

⁴³⁵ Petitjean Roget, *Le Gaoulé*, 254-5.

⁴³⁶ *Ibid.*, 259-60.

⁴³⁷ *Ibid.*, 263.

of Saint Lucia was also visible just twelve miles away. As a site of frequent illicit trade that contravened measures like the recent currency and foreign trade acts, it was a reminder of the brewing conflict between Antilleans and administrators.

Though the arrest itself was unexpected to many witnesses (many of whom noted that the target was the governor, not the intendant), local forces hostile to La Varenne and Ricouart had been amassing near the official procession as it moved through the colony.⁴³⁸ On 17 May, the delegation went south towards Le Diamant, where an assembly of over thirty militia soldiers, foot soldiers, and cavalry officers had gathered the day before. The soldiers had met in front of the Macouba church before the Pentecost mass, then gone from one plantation to another adding people to their group. They had even enlisted a conseiller, Pocquet as they traveled south (parallel to the official delegation).⁴³⁹ Key dinner guests, like Hauterive the general prosecutor, had also planned to do something drastic all along—though perhaps not the arrest. When that assembly arrived at the Bourgeot plantation and met with the official delegation, they exclaimed that it was necessary to make the governor and intendant go with them, on pain of death if anyone resisted. Hauterive did not make a move to stop them.⁴⁴⁰

Weeks of brewing conflict exploded as royal representatives and the colonial faction finally met up at Bourgeot's plantation, but even this confrontation emphasized questions of legitimacy over personal politics. The group of militia officers and soldiers led by Collart and de Roussel, including militia captains stormed the house in the middle of the official dinner, saying "We're under orders from the Colony to kill you if you run

⁴³⁸ Ibid., 265. ANOM COL E 236, Michel Labat. This latter fact indicates that local resentment was aimed primarily at the king's representative, the governor, as it would be in the Dumas affair in Île de France in 1768.

⁴³⁹ Petitjean Roget, *Le Gaoulé*, 265-6.

⁴⁴⁰ Ibid., 265, citing ANOM C8 A25 Dep. La Mothe, No. 14 fo. 72.

off, to break your head if you resist.” They put a pistol under the noses of the administrators and threatened an attack by five hundred men who were purported to have surrounded the house. Hauterive, the conseil’s general prosecutor, had been a dinner guest, but it turned out that he was one of the arrest’s architects along with Collart and de Roussel.⁴⁴¹ La Varenne and Ricouart were put under house arrest, before being transported back to Fort Royal and finally sent on a ship back to France. The weeks of assembling and frustration also broke out into some violence outside the plantation. Collart, one of the arrest leaders, attacked a cavalier in front of the governor and intendant a little after leaving Le Diamant. Meanwhile, a curate arrived because he had heard people in the distance yelling “Vive le Roi” and wondered what was the matter.⁴⁴² This latter anecdote points out that the entire controversy was still carried out under the purported auspices of royal authority, but the actions of Collart, de Roussel, and their colleagues signaled an appropriation of royal protection against what they perceived as the unjust actions of the governor and intendant.

Fewer sources for the Gaoulé than for the Dumas affair emphasize the maritime aspect of local action, but in both cases the drastic step of banishment depended upon one party having the power to demand and enforce the absence of the other by pushing them out into the empty space of the Atlantic and Indian Oceans, respectively. The placement of La Varenne and Ricouart on a boat was an important step beyond their initial arrest because it indicated the Gaoulé rebels’ desire to be rid of the administrators, rather than to deal with them on local terms in Martinique. The logic of the Gaoulé after the confrontation at Bourgeot’s plantation thus had two parts. First, participants constrained

⁴⁴¹ “Nous avons ordre de la Colonie de vous tuer si vous branlez, de vous casser la tête si vous faites résistance.” Quoted in *Ibid.*, 266.

⁴⁴² *Ibid.*, 265, 297.

the movement of La Varenne and Ricouart by physically isolating them under house arrest. This step asserted local power over the metropolitan administrators in a very tangible way, overriding their superior authority as representatives of the French monarchy. Second, Gaoulé rebels banished La Varenne and Ricouart from the island. This action made an even stronger statement of local control, but denied the administrators any kind of hearing within the French jurisdiction held by the Martinican conseil. While on the island, La Varenne and Ricouart could have attempted to find a sympathetic audience for their mistreatment from local residents more willing to accept royal authority (even when it was accompanied by distasteful edicts) and, especially, judicial recourse via the conseils. However, as captives La Varenne and Ricouart became impotent and lacked any protections provided by French jurisdiction on either side of the Atlantic.

The events of the Gaoulé illustrated a confident, even brazen, rebellion against unwanted metropolitan authority by local elites. However, in the aftermath of the Gaoulé, local elites were more circumspect, especially as they sought to avoid charges of treason. Following the arrest of La Varenne and Ricouart, Martinicans compiled evidence that they had acted with reason and purpose. On 22 May, deputies were sent to interrogate La Varenne and Ricouart. However, they responded to nearly every question by saying that they would give an account to the king and the conseil (not the deputies). Meanwhile, the local assembly met to compose a report of their deliberations. They described themselves as militia officers, nobles, conseil and jurisdiction officers, traders, and notables (a catch-all term) of Martinique, assembled in a room of the Jacobin monastery to discuss an earlier report given by Dubucq (the leader of the mob from 18 May) who had been chosen in an informal plebiscite by “several cries of “Vive le Roi,”” a move that asserted civic cooperation and royal deference in the midst of political protest. Dubucq reinforced

this posture in an acceptance speech: he stated that he would not stand for attacks on clerics or military officers, nor would he allow disrespect toward La Varenne and Ricouart.⁴⁴³

The conseil's report articulated alternatives to metropolitan laws while asserting the right to adjudicate the administrators' case. It included immediate reforms for the colony as well as instructions for dealing with La Varenne and Ricouart and specified that they would be sent on an armed convoy from Martinique, forbidding the ship captains on pain of death from stopping at any of the American islands. They also made plans to send for beef and grain from foreign territories, especially from English ships navigating the waters around Saint Lucia. The latter articles of the report concerned the conseil specifically. One limited magistrates from putting *habitants* in prison unless they had broken royal ordinances (i.e. not ones given by the intendant or governor) while another required that justice be administered without delays and excessive cost.

The assembly also composed a letter to the regent and the Maréchal d'Estrées, the viceroy of New France, that compiled the testimony of the island's religious leaders, including Jesuits and Dominicans, to confirm that the assembly had not done anything wrong. Conseillers compiled evidence showing that they knew how provision their own colony, in contrast to the misguided plans of the administrators. They also emphasized their own competence in restoring civil order by dealing with what they considered to be rogue administrators in a logical, if not approved, manner. They backed their actions with testimony of religious authorities, a strategy that played to the monarchy's synthesis of political and religious ideas as the foundation of civil society and also reflected deep cultural assumptions about the terrestrial and divine dimensions of imperial authority that

⁴⁴³ Petitjean Roget, *Le Gaoulé*, 297-9. The mob from Le Diamant (by the 18th at Lamentin) elected Jorna, a colonel, as their leader but he was rejected by the *petit blancs* (non-planter whites), who insisted upon Dubucq instead. 297.

had been vested in the conseil. Conseillers presented a multifaceted body of evidence to the Marine designed to show that they—not La Varenne and Ricouart—held legitimate authority over the colony, building a case for local autonomy that simultaneously reassured the Marine of their loyalty as French subjects.

The number of Martinicans involved in the Gaoulé made it difficult to discern who was and was not directly responsible for the banishment. In the aftermath, participants sought to obfuscate the record even more to conceal their potentially treasonous behavior. In the Gaoulé, a few ringleaders were singled out and convicted on criminal charges while the general inhabitants were likewise granted general amnesty. The Martinique conseil judged (in absentia) on 4 and 8 October 1718 regarding the revolt on 17 May 1717, condemning Belair and Cathier to be burned alive and the three others to be hanged.⁴⁴⁴ Michel Labat, one of the five Martinicans condemned to death for his collusion, cited the other participants as evidence that a large group had accompanied the administrators around the island. Though most of the local assembly members had been dissatisfied with La Varenne and Ricouart, only a few had dared to attack them. Several affidavits were made in favor of Labat and Dorange at the request of Mademoiselle Labat and the new governor general, Pas de Feuquières.⁴⁴⁵ They collected statements made and recorded in the Fort Royal greffe (of the conseil, most likely) in March 1719 by different Martinicans in support of the convicted Gaoulé participants and approved by Michel Labat, who signed this set of affidavits. They were sent to France as evidence along with

⁴⁴⁴ ANOM COL E 24, Belair, Cathier, Dorange, Labat, et Bourgelas.

⁴⁴⁵ Michel Labat had recently married Marie Catherine Dorange, so the two men were related by marriage. Petitjean Roget, *Le Gaoulé*, 263. Mademoiselle Labat seems to have been Michel Labat's daughter, or perhaps another female relative, but the relationship is not specified in the document. Pas de Feuquières was a creole notable himself, with extensive ties to the conseil and planter community, which was also linked into an older order of creole families who had made careers in the military before becoming planters.

an impassioned letter written by Labat himself.⁴⁴⁶ As they had done with the conseil's report, conseil members and Gaoulé participants worked together to draft a history of the revolt that played to their original political purposes, but kept them from being punished for thwarting French law and the king's instructions.

This collection of evidence was persuasive to Marine officials and the king, even if it minimized the Martinicans' defiance. In September 1719, the king (via his regent uncle, the Duke of Orléans) gave amnesty to the Gaoulé participants Belair, Cathier, Dorange, Labat and Bourgelas. The new Martinican intendant and governor (favorable to the rebels) had petitioned on their behalf as they had been excluded in an earlier general amnesty from March 1718. The amnesty restored them to good reputations ("leur bonne fame"), returned all goods that had been confiscated from them, and quashed any other rulings (unspecified, but including those decided in absentia) that had gone against them on this matter. The amnesty also imposed "perpetual silence" on royal general prosecutors, their substitutes, and all other defendants against Belair, Cathier, Dorange, Labat and Bourgelas to conduct any legal proceedings against them. It did, however, forbid the defendants from participating in illicit assemblies and taking arms against the orders of governors and "major" officers of the military who commanded the districts of the king's territories "against the enemies of the State," reiterating their duty to obey and be loyal to royal representatives. The amnesty then instructed the conseil to register it in their records to make it active as part of the law of Martinique (as well as France).⁴⁴⁷ The Martinicans used the conseil as a vehicle for allying local elites and articulating a unified interpretation of the Gaoulé that was difficult for the Marine to challenge. The favorable judgment rendered by the Marine validating their decision to use interjudicial

⁴⁴⁶ ANOM COL E 236, Michel Labat.

⁴⁴⁷ ANOM COL E 24, Belair, Cathier, Dorange, Labat, et Bourgelas.

correspondence to rewrite the Gaoulé as a reasonable protest that played to the monarchy's desire for loyal subjects and helped them avoid any severe punishment from the Marine.

This process also happened individually as conseil members followed a similar pattern of rebellion then requesting the king's pardon. Though the conseil's general prosecutor, Hauterive, had helped orchestrate the Gaoulé, he still wrote a melodramatic letter to the king later that year to request clemency. He repeated the phrase "Vostre Altesse Royale" ("Your Royal Highness") several times in the letter, always written in larger script as if the size of his address would somehow minimize the magnitude of his potential treason in rejecting La Varenne and Ricouart. Hauterive claimed to have had nothing to do with either the arrest or the banishment and that, instead, his enemies or misinformed people had conspired against him. He also called the deportation of La Varenne and Ricouart an "embarquement" (or embarkation), implying that it was a matter of course for the administrators to travel to France rather than a concerted effort by local elites to force them to return.⁴⁴⁸

This chain of reports and letters to the Marine re-established links to metropolitan authority that had been severed temporarily by the Gaoulé but sought to expand local power by reframing the revolt itself as a justified action (and perhaps even repeatable precedent) in the face of ill-advised instructions from the king. Underlying this strategy was the assumption that the king would not (most likely because he could not) enforce severe punishments. By taking initiative and then asking for forgiveness later, the Martinican creoles put themselves in a position of power in which they could argue that

⁴⁴⁸ ANOM COL E 219, Hauterive, d'. 21 November 1717.

they were loyal to the monarchy while simultaneously justifying their own autonomous actions.⁴⁴⁹

This line of argument reappeared in creole rhetoric throughout the eighteenth century, but this strategy was not carried out continuously. Though the assemblies organized by nonelite whites, militia captains, and conseil members had dominated the Gaoulé itself, they rapidly gave way to the conseil in its aftermath. Local groups had expanded in response to conseil weakness and internal conflict, but devolved their new authority back to the conseil after the crisis had passed. The assembly dissolved after a final meeting on 25 May, and Bègue took over from Dubucq as governor. The conseil began meeting again on 7 July in Fort Royal. Martinicans were worried that another revolt might break out, but the conseil actually registered two edicts they found among the papers of Ricouart: one regarding the number of admiralty court officers, another about monetary policy. They also wrote a letter to the Marine stating that they had not participated in banishing La Varenne and Ricouart.⁴⁵⁰ This was another political move designed to reframe the planter revolt as a respectful negotiation with the king, sidelining the expulsion of La Varenne and Ricouart as an unfortunate accident rather than a premeditated challenge to royal authority.

The political protest encapsulated in the Gaoulé was a direct outcome of patterns developed in the Martinican conseil and an associated tradition of local political organization. By the early eighteenth century, the conseil already had a distinctive character dominated by creole families who had been in the area since at least the seventeenth century. Notable inhabitants of the Antilles had also begun assembling as

⁴⁴⁹ This is a strategy that Martinican conseil members, especially, would perfect later on in the century as they created legal codes, at once solving an administrative problem (inaccurate legal records) and advancing legal claims for autonomy for themselves. I deal with this later pattern in chapter five.

⁴⁵⁰ Petitjean Roget, *Le Gaoulé*, 345.

early as 1665 in Martinique, a year after the conseil was established, to deliberate on legislative matters even though the conseil was the only body authorized to collect laws (which had to be given by the king or the intendant and governor). It was so strong that upon arriving in 1717 the La Varenne and Ricouart instructed the governor general to turn the local assembly into a forum for dealing with local issues like fortifications and the quartering of troops.⁴⁵¹ Metropolitan administrators were reluctant to support provincial assemblies (and even less inclined to convoke the Estates General), but they had little power to overcome the Martinican organization.⁴⁵²

Most creoles had served as conseillers in the decade or two before the Gaoulé. Michel de Clermont was a lieutenant judge in Martinique, then joined the conseil in 1708, becoming well respected as an eloquent speaker by the Governor General Feuquières before participating in the 1717 revolt.⁴⁵³ Guillaume Dorange was from one of the earliest families to settle in the colonies, having arrived in the Americas in 1628 and aided the colonial founder Esnambuc in chasing the English off of the first French Antillean colony

⁴⁵¹ Ibid., 189.

⁴⁵² The benign royal reaction to the Gaoulé in 1717 and the blasé accommodation of pirates in Île de France in the 1720s noted in chapter three seem to have coincided with a period of general flexibility within France's empire early in the reign of Louis XV, from his accession in 1715 under a regency to 1723 when Cardinal Fleury took over for a much longer term as regent (until 1743). The colonial government was also in the process of being reorganized at this time, with the formal establishment of the Marine in 1715 and a new wave of judicial reforms in 1723 including the second version of the Code Noir (issued to Île Bourbon and Louisiana) and the replacement of Île Bourbon's conseil provincial with a conseil supérieur.

⁴⁵³ Émile Hayot, *Les Officiers du Conseil Souverain de la Martinique et leurs Successeurs les Conseillers de la Cour d'Appel: Notices Biographiques et Généalogiques* (Fort-de-France: Annales des Antilles, 1965), 104. Clermont had been born in Saint-Christophe in 1663, however: a common background for early Caribbean settlers who migrated from the small island to Martinique in the mid-seventeenth century. Clermont seems to have been part of an older demographic within the creole elite who participated in the Gaoulé: he was fifty-four when it happened. Clermont also had a controversial tenure on the conseil. He was forbidden from continuing to serve on the conseil in 1715 and his membership was revoked in 1716, having been accused of soliciting bribes (*épices*). The next year, he participated in the Gaoulé, but Feuquières (who supported the appeals of rebels) changed his opinion of Clermont, calling him a “great villain” (“grand scélérat”).

of Saint Christopher.⁴⁵⁴ He was a key participant in the Gaoulé, one of those named in the royal ruling that finally pardoned several people in 1719 who had been convicted initially.⁴⁵⁵ Petitjean Roget has defined the Gaoulé as a fundamentally creole revolt, calling it “the crisis of adolescence for this first generation of Martinican creoles.” This was more than that—it raised questions about the constitution of the French empire itself, not just the burgeoning identity of a few subjects—but it is true that while most instigators had parents who had emigrated to Martinique as the first generation of planters, but the Gaoulé participants had not been born in France. However, they had been born into the island’s elite. At least two dozen participants who were creole, most of whom had names like Le Vassor de La Touche, Cacqueray de Valmènières, and Cornette de Saint-Cyr that appear repeatedly in conseil records for the duration of the eighteenth century.⁴⁵⁶ The Gaoulé was an opportunity to test and stretch the limits of local authority within the French kingdom as a whole, to see whether the Marine administrators at Versailles would accept the autonomy claimed by the Martinican local elite.

The label *gaoulé* attached to the 1717 creole revolt has a history that encapsulates the complexity of the event itself and the various tensions Martinican residents and French authorities sought to work out during the revolt.⁴⁵⁷ Though the term originally referred to a group of indigenous people assembled to go to war, by the nineteenth

⁴⁵⁴ ANOM COL E 135, Guillaume Dorange.

⁴⁵⁵ ANOM COL E 24, Belair, Cathier, Dorange, Labat, et Bourgelas.

⁴⁵⁶ Petitjean Roget, *Le Gaoulé*, 515.

⁴⁵⁷ In the Indian Ocean, a similar Carib word, “guivi” was used in Île Bourbon to refer to white settlers who deserted other colonists to join maroon communities in the hills of the island. They were said to “faire le guivi” in a travel account from 1671. It is possible that the term is just a corruption of *gaoulé*, though I have been unable to confirm this hypothesis. Philippe Fabry makes the connection between *guivi* and the Carib language in a footnote, but I have been unable to confirm this link yet. [Anonymous], *La relève de l’Escadre de Perse: voyage du navire du roy le Breton, commandé par monsieur Duclos avec deux houcres nommées le Guillot et le Barbot, Mars 1671*, Unedited text published from the manuscript, edited and annotated by Philippe Fabry, (Montreuil: Ginkgo, [1671] 2004), 48.

century it had a much wider meaning.⁴⁵⁸ Petitjean Roget also speculated that it might have been a reference to African dances observed among slaves in Saint-Domingue or Brazil.⁴⁵⁹ Before 1717, ideas about a *gaoulé* were strongly tied to practices Europeans saw among groups they saw as inferior, but after 1717 the meaning changed to refer to this creole uprising rather than to resistance by indigenous or African groups. This pattern indicates an appropriation of an American phenomenon by European-descended creole elites as a way of arguing that their own revolt (and colonial concerns it reflected) was distinctive.

The term first appeared in reference to the 1717 revolt in a letter by the Martinican creole conseiller Cornette de Saint-Cyr in 1718, when he wrote that “There is going to be a great misfortune, the creoles [*bequets*] are going to make an uprising [*gaoulé*] like the blacks.”⁴⁶⁰ This phrase brought together ideas about the three groups who lived together in the Antilles: white Europeans, indigenous Caribs, and enslaved Africans. In Cornette de Saint-Cyr’s usage, the meaning of “gaoulé” had slipped from its origin referring to Carib warfare to designating local rebellions by slaves, signaling a demographic shift as Caribs had been essentially wiped out from Martinique by the end of the seventeenth century, replaced by growing numbers of enslaved Africans. Local defensive efforts made by local elites like Cornette thus shifted in focus from skirmishes with indigenous groups to attempts to squelch slave resistance in forms like marronage

⁴⁵⁸ Henri Joucla, *Le Conseil Supérieur des Colonies et ses Antécédents, avec de Nombreux Documents Inédits et Notamment les Procès-Verbaux du Comité Colonial de l'Assemblée Constituante* (Paris: Les Editions du monde moderne, 1927), 17-18.

⁴⁵⁹ Petitjean Roget, *Le Gaoulé*, 492.

⁴⁶⁰ “Il va arriver un grand malheur, les bequets vont faire un gaoulet comme les nègres.” Letter from Cornette de Saint-Cyr, Cited in Petitjean Roget, *Le Gaoulé*, 492. This letter also appears to have an early usage of the term “béké” (as bequet) which designated elite white Antilleans, essentially a synonym for creoles (i.e. European-descended colonists). The etymology of the word This term “béké” is still in use and actually appears more often today.

and slave revolts. Cornette's statement indicates that ideas about local cases of resistance (Carib and slave revolts) become integrated with and mapped onto French conceptions about royal authority (assertions of loyalty to the king, complaints against his ministers).

Terms for local revolt that linked white rebellion to revolt by indigenous and enslaved populations were present in both spheres, Atlantic and Indian Ocean, of French colonial activity. In the Indian Ocean, a similar Carib word "guivi" was used in Île Bourbon to refer to white settlers who deserted other colonists to join maroon communities in the hills of the island. They were said to "faire [make or do] le guivi" in a travel account from 1671. This raises the possibility that "guivi" was just a corruption of "gaoulé," and that a similar language of revolt transferred between French colonies in the Indian Ocean and Atlantic. More generally, eighteenth-century usage of the term gaoulé made it equivalent to the idea of a "fronde" or "revolt of lords [*seigneurs*]." The former idea referred to the revolt of nobles against growing royal power in France between roughly 1648 and 1653 that became known as the "Fronde" while the latter linked the idea of "gaoulé" to seventeenth- and eighteenth-century conflicts between monarchs and their noble subjects. By the early nineteenth century, the term "gaoulé" had widened in definition to become a general term for revolt. This change in meaning over time points to a conflation of specific ideas about types of civil disorder into a more general idea of local revolt against imperial power. However, the persistence of the term gaoulé linked it inextricably to the 1717 revolt as an important instance and even model case of this kind of conflict.

The Gaoulé was a flashpoint for tensions between creole and metropolitan elites at a moment of imperial weakness and creole confidence. In the Atlantic Ocean, longstanding experience with local governance had imbued local elites with the confidence to counter new royal instructions that seemed to go against their own interest.

Having already worked out solutions to problems like provisioning by finding illegal but adequate sources in territories owned by different empires, local elites also believed that they could counter royal administrators by pointing out their own, locally-achieved success. When their arguments proved problematic, they improvised the solution of banishment, which the royal government eventually pardoned following the pleas of Gaoulé participants. The large distance (and jurisdictional void) separating Martinique from Versailles proved to be a buffer that Martinicans assumed (rightly, in this case) the royal government was hesitant to cross in order to pursue punitive measures. The conseils increasingly became sites for legal debates about the status of creole governors that would eventually take the form of written debate as colonial promoters and lobbyists like Petit and Dessalles made increasingly historical cases for their expertise by compiling legal codes that tracked local jurisprudence from the earliest years of colonization to the present, establishing a pedigree of legal competence. Though some Gaoulé participants, like Michel Labat, argued that the arrest of La Varenne and Ricouart had taken the protest too far (implying that it did not fit his conception of the proper choreography of justice), the muted response from Versailles indicates that the Martinicans had successfully shifted the steps in imperial dimensions of that choreography.

THE “DUMAS AFFAIR,” 1767-1768

French administrators were pushed out of French colonial jurisdiction during the Gaoulé as creole elites claimed authority for themselves, but royal administrators hardly responded. The Dumas affair illustrated a different dynamic, in which a resident metropolitan administrator (Dumas) sought to dislodge a local elite (Ribes) by sending him out of French colonial jurisdiction and it was the latter who resorted to metropolitan forums for remedy. The Dumas affair, though centered on a personal dispute between Ribes and Dumas, was also marked by greater attention from metropolitan audiences.

The Gaoulé occurred at a moment of imperial indifference, but the Dumas affair occurred at a moment of imperial renewal.⁴⁶¹ In 1767, French administrators had renewed their attempts to develop the Mascarenes into flourishing colonies, taking over from the bankrupt Compagnie des Indes orientales and installing direct royal rule, which was vested in Pierre Poivre as intendant of both islands and Jean Daniel Dumas as the Mauritian governor. The Mascarene conseils were also dissolved and reconstituted in 1767 as part of the royal takeover. This marked a decided expansion into the Indian Ocean, following a pattern of tentative settlement, territorial defeat against Britain in South Asia, and (more recently and painfully) global setbacks via the terms of the Treaty of Paris in 1763 that drastically reduced French territory in North America.⁴⁶²

It was also a period of renewed interest in the natural resources that could be exploited on the Mascarenes and Madagascar, attracting scientific research expeditions by well-known botanists. The years 1767 to 1768 included the arrival of the governor and explorer Bougainville (coming in from the Pacific while circumnavigating the globe) and the travel writer and engineer Bernardin de Saint-Pierre (who arrived from the west). The naturalist and academician Pierre Poivre was likewise installed as the intendant, with a goal of revitalizing the Mascarenes' agriculture through new crops and better conservation.⁴⁶³

⁴⁶¹ The whole controversy appears to have been known at the time (or at least a little after) as the "Dumas affair," a designation that appears in ANOM COL E 153, Jean Daniel Dumas, Unsigned ruling at Versailles, 5 October 1775.

⁴⁶² Auguste Toussaint has noted a similar shift in focus from India to the Mascarenes following the American Revolution. However, the loss of most French Indian possessions in the 1740s makes it more likely that this shift had already occurred with the exception of entrepôts like Pondichéry. In contrast to Toussaint, I argue that the mid-1760s, marked an earlier transitional period in which France focused on the Mascarenes, a necessary step for later plans to seem plausible. Auguste Toussaint, *Le route des îles, contribution à l'histoire maritime des Mascareignes* (Paris: S.E.V.P.E.N., 1967), 95.

⁴⁶³ Pierre Poivre, *Discours pronounces par M. Poivre, commissaire du Roi; l'un, à l'Assemblée générale des habitants de l'isle de France, lors de son arrivée dans la colonie; l'autre, à la première assemblée publique du Conseil supérieur, nouvellement établi dans l'isle*. (Published in London, sold in Lyon: Chez J. De Ville, & L. Rosset, libraires, rue Merciere, 1769). John Carter Brown Library.

The political power centered on the conseil supérieur, governor, and intendant, did have other more grassroots iterations in the form of municipal governments and militias. Under company rule, the Île de France conseil had established local representatives, known as syndics, to manage community affairs.⁴⁶⁴ Syndics were often Europeans who had migrated to make their fortunes, but had achieved neither the spectacular economic success nor the metropolitan offices and patronage connections held by most conseil members. In the Mascarenes, syndics were most often minor landholders and soldiers. Edmé Charles Yardin embarked for Île de France in 1739, replacing a soldier (somewhat forebodingly named Brisetout, or “Break-all”) who had just deserted. He received an advance for thirty livres at Lorient and left in April.⁴⁶⁵ By 1764, a Charles Yardin (Edmé Charles or his son) was a syndic of the Montagne Longue canton and was wealthy enough to purchase a plantation for 74,000 livres.⁴⁶⁶ By the late eighteenth century, the Yardins appear to have become landed and somewhat notable: Jean Baptiste Yardin was a notary in the Plaines-de-Wilhems region of Île de France from at least 1797 to 1806.⁴⁶⁷ As community leaders, syndics formed a crucial point of connection between the planter class that tended to dominate the conseils and other layers of colonial society.

⁴⁶⁴ In France, syndics also acted as community representatives who initiated and organized petitions. See, e.g. the case of a Paris syndic helping to organize a petition to banish Germain Barthélemy to the colonies, discussed in more detail in chapter three. ANOM COL E 203, Barthélemy Germain.

⁴⁶⁵ ANOM COL E 393, Edmé Charles Yardin.

⁴⁶⁶ However, the Yardin fortune seems to have been somewhat unstable. This mention of him comes up in a letter to the minister of the marine regarding Yardin’s failure to keep up with the payments on this plantation, prompting the previous owner’s widow to request royal support in forcing him to pay, creating a conflict that lasted until at least 1774. Letter from widow of André Hyacinthe to De Boynes, minister of the Marine. December 1771. ANOM COL E 226 André Hyacinthe.

⁴⁶⁷ Some of his copies of notarized documents and report ledgers (*répertoires*) have survived: ANOM DPPC NOT MAUR REP 5; ANOM DPPC NOT MAUR 512.

According to the conseil's general prosecutor and the syndics' sponsor, Jean André de Ribes, the syndics could assemble in front of the governor, who could approve their initiatives and examine reports on their conduct. This was meant to acknowledge the oversight of the administrators, but ultimately left significant power in the hands of the syndics. They received statements regarding slaves who had become maroons, conducted annual censuses, and managed the *corvées* (road taxes and maintenance). In the tropical heat, the bodies of people who died often deteriorated too quickly, so the syndics were also entrusted with carrying out some of the procedures regarding estate successions as conseil officials could not get there fast enough.⁴⁶⁸

They were also in charge of local militias gathered to hunt maroons. Local planters wanted increased compensation for the extra effort they exerted in capturing maroons, so the local assemblies of syndics were a way to organize these forces more effectively. However, the government paid syndics in the company's paper money, a currency widely considered worthless. This factor, not articulated by Ribes, also seems to have contributed to local discontent because it meant that even increases in payments resulted in little actual change in compensation. Ribes had requested a new payment system to be implemented that would follow the goal of the royal orders to pay the syndics, but not be limited to the specific provisions for payment. However, even though the governor and intendant had suspended the new payment system, the syndics had continued to meet.⁴⁶⁹

Ribes had a track-record as an advocate of local political power. He had started his career in Île de France in 1754 as the chief greffier for the island's conseil. He became

⁴⁶⁸ ANOM COL E 119, Jean André de Ribes, 13 January 1768. Letter to Praslin.

⁴⁶⁹ Ibid.

a conseiller in 1763 and then the conseil's general prosecutor in July 1766.⁴⁷⁰ This meant that he was part of a generation of conseil officials who had been in place for at least a decade under company rule. They were part of the conseil that was suppressed and then recreated in 1767 as the island came under direct royal rule. However, the fact that he was chosen as general prosecutor in July 1766, with the creation of a new conseil, showed that he did have clout within the metropolitan administration (where these decisions were made).

By contrast, Dumas had worked his way up through the French military (Marine), serving first in Canada before being appointed to run the military arm of the Mascarene government under new direct royal control.⁴⁷¹ While Ribes supported the syndics, Dumas had established militia commanders for each neighborhood (*quartier*) who were given authority to police the coming and going of residents. Dumas had instructed the commanders to make sure that planters did not leave their plantations without their permission. Ribes explained in his report that he would have managed this differently. He would have assured the citizens of their freedom of movement, something he feared bringing up with Dumas.⁴⁷² The conseil officials, represented by Ribes, counted Dumas's militarization as a "perpetual shock" against the power of the conseils, that focused on law as a means of managing the colonial order. Dumas's refusal to rescind his order to the conseil brought this conflict to a head because it meant that he insisted on using the conseil for his own ends, without consulting them.

⁴⁷⁰ Ibid., Letter to Sartine, 7 May 1775.

⁴⁷¹ Dumas was installed as commander of the Mascarenes in 1766 and served in that post until 26 November 1768. Colonial governors, unlike legal employees like Ribes, were granted direct control over many colonial residents, too. Dumas was sent to the Indian Ocean with 1,200 men, of whom 800 were to stay in Île de France, while the rest were sent to Réunion. Twenty-four slaves (previously owned by the company) were also transferred to his possession upon his arrival. ANOM COL E 153, Jean Daniel Dumas.

⁴⁷² ANOM COL E 119, Jean André de Ribes, 13 January 1768. Letter to Praslin.

If the syndics were an ongoing site of contention between Ribes and Dumas, then a second area of conflict, official ceremonies, brought their disagreements into even sharper relief. The official processions and ceremonies of the conseil and wider colonial government were designed to illustrate the imperial hierarchies that governed specific colonial spaces, so ad hoc gatherings by local notables formed a threatening alternative to these ritualized events. Besides the syndic payments, Ribes had also made a request to the conseil regarding rank and precedence that one could have in the church and public ceremonies, to determine the days in which they would meet as a body in the church. Ribes had shown the conseil, including the governor and intendant, the royal ordinance given to Martinique regarding the festival of Saint Louis. The practice had been for the conseil to accompany the governor in a procession as a celebrant led singing of a holy hymn (*hymn du saint*). The governor led the way to the church to light a ceremonial fire (*feu de joy*). The procession then went to the church and the *Te Deum* was sung there.⁴⁷³

However, there was confusion over which colonial elites were required to attend this procession and ceremony. Some, including the intendant (Poivre) and the head of the conseil (the *doyen*) thought that this was a purely military ceremony, so they had skipped it. Dumas, however, assumed that the ritual fire alerted the conseil members that they should attend. He asserted on the basis of information from local priests that this ceremony was part of a fundamental rite of the parish church of the island. In this case, Dumas was angered that he had done the procession and then found himself unexpectedly alone when he arrived at the church. Though his personal pride was no doubt wounded, too, Dumas accused Ribes and the conseillers of having snubbed the king whom he represented in the colony as the governor.⁴⁷⁴ Dumas's authority was called into question

⁴⁷³ Ibid.

⁴⁷⁴ Ibid. Versions of this idea were common in early modern European empires. For comparisons to Spanish and British colonial empires, see Alejandro Cañeque, *The King's Living Image: The Culture and*

without the presence of the conseillers to present a unified community of local elites to observers.

Ribes, Poivre, and the conseillers countered that there was no act that specified that they had to attend the *Te Deum*. Dumas responded by drafting an order to the conseil that required the conseillers to retain the dignity of their places and prevent personal conflicts from disturbing the public order. Ribes responded again with a legal measure. Since the Île de France conseil lacked a law for this ceremony, Ribes wrote to France to request one.

At stake in this fight was a question of legislation versus precedent. Ribes, the prosecutor, insisted on following only the instructions that had been received as law from the king. Dumas cared more about whether general principles were followed, especially regarding deference to the king. Political and religious ideas were thus merged for military administrators like Dumas in a way that they were not for the legal and financial administrators of the island like Ribes and Poivre. Where Dumas believed that he had brought royal authority to Île de France in his role as governor and stand-in for the king, Ribes believed that royal authority could only be brought to Île de France in the form of legislation. Dumas insisted on the presence of royal authority as vested in a person, while Ribes insisted upon law, especially written law, that had come from France.

The clash of Dumas and Ribes over the *Te Deum* captured a whole set of tensions and assumptions about how royal and local authority worked in a setting that was already a scripted portrayal of these ideas. The *Te Deum* was a hymn of divine praise that most likely dated from the fifth century and was often known as the “Hymn of Saint Ambrose

Politics of Viceregal Power in Colonial Mexico (New York: Routledge, 2004) and Brendan McConville, *The King's Three Faces: The Rise & Fall of Royal America, 1688-1776* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2006).

and Saint Augustine” in reference to its attributed authors. However, in the seventeenth century, it had been appropriated by the French monarchy as a symbol of royal power backed by divine authority. The twenty-nine lines of text that formed the *Te Deum* called upon either God or the king as sovereign protector and affirmed the loyalty of his subjects. The king’s court was likened to Christ’s apostles, characterizing them as disciples of the monarch who was simultaneously a political and religious leader. The *Te Deum* focused on the stability and protection of the king for his subjects, saying that he “represents the necessary stability for the perpetuity of the kingdom [*royaume*] of France.”⁴⁷⁵ It merged ideas about deference to the king with worship of God. Adoration of God by singing the psalms also counted as adoration of the divinely-appointed king by his loyal subjects.⁴⁷⁶ The contest over the *Te Deum* is a reminder that conseils, and colonial societies, were not strictly defined by the state. Instead, colonial life (even that centered around the conseils) involved a range of activities that were religious and social in nature, not just political. The procession of colonial officials from the parish church to the *palais de justice* made this connection explicit by the line it drew between these two places.

The *Te Deum* was exclusively reserved for events related to the king, like baptisms and marriages. Versions of the *Te Deum* often referred specifically to military victories and peace treaties, too. These factors made it the most common hymn during the *ancien régime*. Because of its constant association with the French kingdom and royal

⁴⁷⁵ Jean-Paul C. Montagnier, “Le *Te Deum* en France à l’époque baroque: Un emblème royal.” *Revue De Musicologie* 84.2 (January 1, 1998): 206-8.

⁴⁷⁶ I thank Aaron Alejandro Olivas for advice on this issue and references to *Te Deums* sung in other parts of France's kingdom.

power, Jean-Paul C. Montagnier has likened the *Te Deum* during the ancien régime to the centrality of the *Marseillaise* for the republic.⁴⁷⁷

It was always publicly performed and was often a required ceremony specified by royal decrees, which were sent to the colonies as well as throughout France's mainland provinces. A letter from the king in April 1713 required the governor of Saint-Domingue to have the *Te Deum* sung in commemoration of the peace treaty signed at Utrecht, which ended the War of Spanish Succession.⁴⁷⁸ In 1749, another royal letter instructed the Martinican governor to have it performed to celebrate the end of the War of Austrian Succession.⁴⁷⁹ Ribes was aware of these decrees, even ones that had been sent to Martinique, showing that he understood French law in contexts outside the Indian Ocean. It is unclear how Ribes knew about colonial law in the Antilles, but it raises the intriguing possibility that conseillers were communicating with each other among colonies rather than strictly through the metropole as a mediator. Ribes was in communication with other conseillers in France, including a Moydieu in the Grenoble Parlement.⁴⁸⁰ The *Te Deum* symbolically connected these disparate colonies and regions within France as processions were performed nearly simultaneously across France's *ancien régime* empire.

The requirement to sing the *Te Deum* in the colonies as well as in France expanded the idea of the kingdom (*royaume*) in the same way that the conseils expanded the judicial definition of the kingdom so that it was conceived as one unified entity. The Dumas affair shows that on the one hand this was true: the *Te Deum* was performed in an

⁴⁷⁷ Jean-Paul C. Montagnier, "Le *Te Deum* en France à l'époque baroque: Un emblème royal," *Revue De Musicologie* 84.2 (January 1, 1998): 203-5.

⁴⁷⁸ ANOM COL A 28 F° 7, 14 November [or 14 May] 1713.

⁴⁷⁹ ANOM COL A 26 F° 29v, 1 February 1749.

⁴⁸⁰ ANOM COL E 318, Moydieu. This evidence comes from the late 1770s, however, so it is unclear if he was in contact with Moydieu in the 1760s.

Île de France that lay several thousand miles away from the Île de France that was centered on the court at Versailles, where Lully and Lalande's music that expressed ideas about royal hierarchy would have been performed more regularly.⁴⁸¹ The vocal element of the *Te Deum* also underscored the degree to which the Dumas affair occurred as a face to face conflict, which took place in the church, conseil, and streets of Port Louis. The *Te Deum* required local elites to gather and articulate ideas about royal authority, whether by following the hymn's script or by working out hierarchies by talking to each other. Only once Dumas had banished Ribes did the conflict take on a new form through the correspondence that both men sent to the metropole in their defense.

The procession itself constituted a moving community, not a unified form, however. The squabble between Dumas and Ribes showed that participants could have very different ideas about how religious, military, and civil authority should be constituted, even while agreeing with the general assertion of the procession and *Te Deum* that religious and royal authority were tightly knit. Both Dumas and Ribes wanted to use public ceremonies to set precedents for their visions of royal authority and colonial governance. They both saw that these were models that signaled to colonial residents how they should act toward them: with deference to the administrators, king, and God simultaneously.

On 23 February 1768, Dumas put Ribes and a colleague, Rivals, under house arrest. On 5 March, he escalated his "despotic vengeance" by banishing them from the island. Dumas ordered them to embark on a ship in a season of bad weather ("la saison la plus critique") for an uninhabited island ("île deserte") until he decided otherwise. Dumas thought that by his ferocity he could make everyone believe that the actions that he had

⁴⁸¹ Montagnier argues that the *Te Deum* was actually much more politically powerful than court music like that by Lully and Lalande because it was required to be performed. His argument is strengthened by this evidence for the colonies. Montagnier, "Le *Te Deum*."

imputed to Ribes were atrocious. Ribes dissented. He insisted that even if he had done something wrong he had not deserved this punishment, assuring the minister that “my heart is pure, my hands clean, and my conscience tranquil, victim for the moment of the intrigues of M. Dumas, I will find in you the avenger of an unjust oppression.”⁴⁸² Ribes thought that he could count on the help of the minister of the marine, who was (nevertheless) a six-month voyage away by ship.

This counterintuitive decision encourages a reframing of eighteenth-century ideas about space and time, particularly about time as a factor of space. By Ribes’s calculation, nothing lay between Île de France and France except for the “île deserte,” so the next and best hope for him was to access people in France once it became overwhelmingly clear to him that he could not persuade Dumas to let him off the ship in the Port-Louis harbor. Even though the Marine minister was six months away (a definition of time that elided descriptions of the water over which they would traverse and the intervening ports that they would visit), Ribes believed that he had a better chance of receiving aid via this letter than from any other means of communication. The wording of the letter, emphasizing the bad weather and poor timing of the voyage, implied that Ribes thought that the letter might even make it to France before he did. This possibility was further encouraged by the presumed destination of a deserted island, giving Ribes little hope that he would even make it to France.

The testimony of the letter was thus as important to Ribes as its destination. Ribes’s account gave a counterargument, in writing, to any slanderous dispatches that Dumas might send to his immediate boss, the Marine minister, who was also Ribes’s intended recipient. This factor points to his apparent rush in writing the letter. Ribes wanted to make sure that *his* side of the story reached Versailles first, especially since

⁴⁸² ANOM COL E 119, Jean André de Ribes, Letter to Praslin, 5 March 1768.

Dumas had the higher position in the colonial government. If Ribes could get his letter there first, he could appear to be a loyal subject and prosecutor who alerted the monarchy of a perversion of justice by the king's own representative, Dumas, rather than the other way around if Dumas's letter arrived first.

Governors represented the king symbolically and had greater practical powers in terms of managing military fortifications and other island defenses as well as controlling the entry and exit of people to the colonies. They often saw themselves as the *de facto* guardians of the colonies and resented the *conseils* (and their chiefs, the *intendants*), whose legal and administrative power they saw as insignificant compared to the governors' access to force.⁴⁸³ However, general prosecutors had a role as gatekeeper within the legal regime because they brought and prosecuted criminal cases (sort of like a modern district attorney), where *conseillers* tended to deliberate and decide on cases only. In bi-annual assemblies called *mercuriales*, they were also responsible for calling out their peers in cases where justice had been unfairly rendered.⁴⁸⁴ Both Dumas and Ribes appear to have seen themselves as guardians of Mascarene civil order, each citing the other for misconduct based on a wider social understanding of their official roles within the French kingdom.

Dumas and Ribes were forced to work out their differences directly with each other, but Dumas used his power as governor (and stand-in for the king) to force Ribes

⁴⁸³ This was a persistent problem across the French empire. Boucher makes an almost identical assessment for the Antilles in the seventeenth century, citing the first *intendant*, Patoulet, and Blénac as setting a precedent for this tension: "In the distant and exposed Caribbean colonies, the governor-generals wielded more power than provincial governors in a relatively secure France, because the latter were within the royal army's corrective reach...Often contemptuous of the social and professional background of *intendants*, island governor-generals frequently were intolerant of the paper pushers." Philip P. Boucher, *France and the American Tropics to 1700: Tropics of Discontent?* (Baltimore: Johns Hopkins University Press, 2008), 210.

⁴⁸⁴ For more on the *mercuriales*, see chapter two.

and Rivals off the island. Ribes and Rivals were then forced to seek the aid of metropolitan authorities, but from a sort of no man's land outside the bounds of the French kingdom, on a deserted island. Dumas's actions removed Ribes and Rivals from the jurisdiction of the conseil by physically sending them away, kicking them out from under the protective barrier of conseil procedure and leaving. Aligning himself with royal authority by claiming his symbolic role, Dumas exerted royal authority over the conseil in a way that mirrored royal orders from Versailles that could quash conseil rulings.

The letter took on a life of its own as Ribes dispatched it ahead of his own voyage. One can imagine the letter itself on a tumultuous journey, stuffed away in a sack deep in a ship's hold as tumbled through the waves down to the Cape of Good Hope, up the African coastline, across into the Caribbean, and back across the Atlantic to France. It is also possible that people on the ship would have read Ribes's letter as they tried to pass the time on the long voyage. A man named Tiver wrote to the Marine in 1771, complaining that mail normally entrusted to ship captains was frequently opened by them when they got bored and curious on long voyages. Tiver cited family secrets and commodity prices as two kinds of sensitive information that could be distributed unknowingly via unscrupulous ship captains. He proposed a specific maritime postal service to connect the Antilles and France, hoping to get the contract himself.⁴⁸⁵ Ribes's letter might have suffered a similar fate, but it did eventually reach the marine where it is now in his personnel file.

For Ribes himself, however, the journey ahead seemed much less certain. With the only destination labeled a deserted island, Ribes did not know whether he would make it back to France at all. Ribes spent the next several years banished from Île de France, traveling a circuitous route to France to appeal directly to the king against

⁴⁸⁵ ANOM COL E 379 bis, Tiver.

Dumas. Ribes faced a conundrum familiar to many colonial residents in the eighteenth century: the distance of Île de France from France's imperial headquarters at Versailles meant that colonial residents had to work out their own dispute resolutions, or wait for letters and their own bodies to travel the great distance to France.

Ribes was not alone in his fight against Dumas, however. He had been accompanied by Raymond Rivals de Saint Antoine, another conseil official, while under house arrest and banishment. Supporters of Rivals and Ribes also sent letters to persuade Marine officials in their favor. Raymond Rivals's brother, Rivals de Perles, wrote from Lorient on 5 February 1772 to the Marine to request their protection for Raymond against the suffering incurred by the animosity and hate of Dumas. Rivals de Perles claimed that Dumas had always abused the authority of his place, defying the power entrusted to him by the king. This argument implied that Dumas had cast aspersion on the king, whom he represented in Île de France, through unjust rule which had rightly prompted the response of Rivals (and Ribes) as leading members of the conseil.⁴⁸⁶ Like Ribes, Rivals interpreted Dumas's actions as violations (and even a betrayal) of royal authority and the king's responsibility to provide justice for his subjects. Ribes's and Rivals's arguments against Dumas cut into the core message of the *Te Deum*, that the king was divinely inspired magistrate worthy of thanksgiving, and identified Dumas as a false personification of that message.

A certain number of strong personalities like Ribes and Dumas have stood out in the history of the Mascarenes during the eighteenth century, obscuring the role of a wider community of inhabitants who negotiated ideas about justice and authority.⁴⁸⁷ Ribes's

⁴⁸⁶ ANOM COL E 352, Rivals de Perles.

⁴⁸⁷ See, e.g. Madeleine Ly-Tio-Fane, *The Triumph of Jean Nicolas Céré and His Isle Bourbon Collaborators* (Paris: Mouton & Co., 1970); Richard H. Grove, "Protecting the climate of paradise: Pierre Poivre and the conservation of Mauritius under the ancien régime." in *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600-1860* (New York:

fight with Dumas was accompanied by a similar personality conflict between Dumas and Poivre, which was observed by Bernardin de Saint-Pierre and others. In the latter case, Dumas accused Poivre of financial crimes while Poivre thought that Dumas was incapable of doing his job. By the time the travel writer Bernardin de Saint-Pierre arrived in mid-1768, the Île de France government, especially its judicial machinery, had ceased to work entirely. His description noted a dismal natural environment mirrored by a chaotic civil order: “All I could see around the harbour was a rugged coast, stripped of trees and covered in yellow grass...We learned from the pilot that things on the island were ablaze, with two warring factions headed by the intendant and by the governor, and that there was only paper money.”⁴⁸⁸ Bernardin de Saint-Pierre recognized the schism that divided Mauritian society even as a new arrival, though he did not see inside the conseil politics of which Ribes was a part.

The conflict between Ribes and Dumas was a colonial conflict but it did not start and end at the highest levels of colonial administration. Instead, their personal fight signaled a divergence in ideas about colonial order that ran across society and lined up syndics against militia leaders, conseillers against marine officers, and intendants against governors. This conflict converged on the conseils because these were the state-sanctioned forums in which competing groups (and colonial elites) gathered. Ribes was required to work with Dumas, who symbolically headed the conseil as a royal representative. Dumas had to rely on Ribes and the conseil to confirm his orders and to act as guardians of the king’s laws. But Dumas and Ribes had different ideas about who

Cambridge University Press, 1996), 168-263. However, recent work by scholars like Pier Larson and Richard Allen has decentered this point of view by focusing on the lives of Malagasy and enslaved Africans in the western Indian Ocean. See especially Pier M. Larson, *Ocean of Letters: Language and Creolization in an Indian Ocean Diaspora* (Cambridge: Cambridge University Press, 2009) and Allen, *Slaves, Freedmen, and Indentured Laborers* for cultural and social approaches to this period.

⁴⁸⁸ Bernardin de Saint-Pierre, *Journey to Mauritius*, 92. Letter 5 [1768].

should run local politics and how royal authority should be distributed. Dumas favored the militia commanders while Ribes supported the syndics. Dumas favored a military regime of which he was the head and the royal representative, while Ribes desired a legal regime built on local political participation and a rule of law based in the conseils.

The Ribes and Poivre faction won this conflict and the power of the notables grew, sheltered under the conseils and lower courts. At the end of 1768, Dumas was recalled to Paris and replaced by a temporary governor named Steinhauer until 1769, when the new governor, Desroches, arrived.⁴⁸⁹ In the second half of the eighteenth century, increasing numbers of notables were integrated into the judicial framework of Île de France. A conseil ruling from Île de France executed letters patent from the king from July 1776 that allowed the conseil could name five notable residents (*habitants*) to assist the royal judge and his lieutenant in criminal cases. 9 July 1778.⁴⁹⁰ An additional regulation by the conseil on 10 July 1778 added a sixth notable to help the royal judge who could act as a substitute for the others.⁴⁹¹ A third conseil regulation from 5 July 1782 let notables supplement officers on the local jurisdictions, including replacing them if they were unavailable for some reason, pending royal approval.⁴⁹² The Île de France conseil took the initiative to hire extra magistrates but recognized that they would have to submit to the king's will. However, the delay in passing the law and having the king confirm it (accounting for an oceanic voyage of at least six months in each direction) implied that the conseil could at least have enough judges in order to clear a backlog of cases well before the king could stop them.

⁴⁸⁹ Editorial note, Bernardin de Saint-Pierre, *Journey to Mauritius*, 241.

⁴⁹⁰ ANOM FM F/3/211 Île de France, 413.

⁴⁹¹ Ibid., 415. The ruling specified that it was pending the approval of the king.

⁴⁹² Ibid., 621.

This pattern indicated an expansion of judicial personnel at the most local level—the royal *siège*—by the highest local court, the conseil. It also signaled a growing inclusion of local leadership into the legal apparatus of the kingdom, recognized both by the king at Versailles and by the conseil, which added another person in recognition of its own expertise on how many people were needed to adequately dispense justice in the court. This provided for more local influence on local jurisdictions rather than conseillers appointed from the metropole, a process that happened much less often in the Antilles, where metropolitan ties had been strengthened over the course of the eighteenth century.

Ribes in France

Ribes's experiences in France show that the pathology of empire, or imperial dysfunction, that had harassed him first in Île de France, then stranded him on an "île deserte," could also be spread to France itself. His case continued for several years and was quite costly, during which he traveled around France to seek a final judgment from the Marine and gather the resources and permissions to return to the Indian Ocean. In a letter dated 7 May 1775, Ribes explained to the Minister of the Marine, Sartine, that he had been outside of Île de France for three years (since April 1772), during which he had been visited the royal government several times (at court) to advocate for his reinstatement. He had traveled to the royal palace at Fontainebleau three times and also made two trips to the French court at Compiègne to request aid in person. This may not count as a typical court case involving a cause, depositions, and witnesses, but it was a court case in that he presented his problem directly to the French court—as a conglomeration of officials and nobles—in person with the hopes that they would, like a judge, decide on his situation.

These face to face interactions with royal officials had not worked, however, so in the letter Ribes requested royal payment for him to return to Île de France with his two

creole daughters, having no other means to establish himself in France. Within France, Ribes wandered from court to court to try to recover the employment he had lost when Dumas had banished him, but does not appear to have had much of a hearing. France proved to be an unsatisfying and insecure place because, even with his brother's help, he could not find the adjudication and employment that he sought.

Ironically, then, the only "île" of France on which Ribes could finally settle was the one in the Indian Ocean, not Europe, from which he had been originally expelled. Though Ribes had around 40,000 livres earned from the profits of his plantations, he found it difficult to convert this income into money that could support his legal difficulties while in France.⁴⁹³ Liquidity was a constant issue, particularly in the Indian Ocean where silver Spanish piasters were the preferred currency and where paper money issued by the monarchy was disliked by colonial residents as an unstable (and often worthless) medium of exchange.⁴⁹⁴ The monarchy also frequently changed its monetary policy, particularly in the 1770s and 1780s, which complicated transactions further. On French territory in the Indian Ocean, however, Ribes could at least consume and sell the products of his plantations and gain a measure of financial security, linking him to the land in both tangible and symbolic ways.

Ribes also sought to re-establish himself among the planter elite with privileges that allowed him to participate in the colony's governance. He explained to Sartine that he did not want to be reinstated as general prosecutor, partly because the conseil had been

⁴⁹³ ANOM COL E 119, Jean André de Ribes, Letter to Sartine, 7 May 1775.

⁴⁹⁴ See, for example, the report submitted by Rheims Rose from Île de France to the Marine in the 1780s, which complained that Spanish silver sent to the Mascarenes was almost immediately traded to Africa and Asia, creating a shortage that the king sought to substitute with paper money, which merchants especially hated. ANOM COL E 359, Rheims Rose. For examples of legislation regarding this problem that Rose was criticizing, see especially ANOM FM F/3/211 Code de l'Île de France, e.g. the August 1779 edict outlining a new printing of paper money for the Mascarenes.

suppressed and presumably because of his own disastrous experiences in that role. He did want to practice in the new conseil, noting that M. Du Verdereau (formerly his substitute prosecutor) had requested to return to France, making his old position as conseiller vacant. Ribes also requested honorary status with the right to *séance* and *voix deliberative*, in consideration of his twenty years of service on conseils established successively on the island: as greffier in chief, 1754, conseiller in 1763, then general prosecutor July 1766. A report from 16 April 1775 recounted his actions since he had been banished from Île de France three years before. He asked the Marine to rule in his favor and quash the conseil ruling against him, as well as to grant him honorary status on the conseil. He repeated what was in the previous report and itemized his requests, of which there were five. The Marine acquiesced to two of the requests, one for honorary status and the other for passage back to Île de France.

The Marine objected to his request for honorary status on the same conseil from which he had been banished, predicting that it would encourage him to renew the troubles that had started this issue. However, they did recognize Ribes's longstanding service on the conseil, so they awarded him honorary status without the right to attend and participate in hearings (privileges of *séance* and deliberative voice). These rights gave Ribes the rank of conseiller without any of the power that typically went along with it, allowing him to re-join the community of elite planters who ran the conseil but limiting his ability to influence them directly. This punishment may not have actually limited Ribes in practice, as his return to Île de France, and the conseil specifically, surely would have led him to seek informal influence by virtue of his connections and experience.

Metropolitan administrators did recognize that a certain remedy (if not recompense) was required for the treatment Ribes had suffered under Dumas.⁴⁹⁵ The Marine also granted him passage back to Île de France, along with his domestic and two daughters. Finally, they authorized the cashing of letters of exchange so that he could have money for travel and to set up his new career in Île de France. On 28 May 1775, Ribes wrote to Sartine to thank him for giving Ribes and his daughters passage back to Île de France and also the balance of his appointments (“solde de mes apointemens”) that he had requested, though he renewed his request for a position on the conseil.⁴⁹⁶ These “appointments” were legally-binding instructions designated for the conseil greffe that would have specified the terms of Ribes’s reinstatement, assuring that the Île de France community would have to recognize his status.⁴⁹⁷ Ribes, like the Gaoulé participants, successfully lobbied the Marine as a conseil member for favorable instructions that were guaranteed by the conseil as a legal repository, winning a conflict with metropolitan administration through the persuasion of interjudicial correspondence and the authority of conseil rulings.

⁴⁹⁵ By contrast, Dumas appears to have lost the favor of the Marine and court society more thoroughly. In 1775, the Marine ruled that the Dumas affair be expedited before the court’s depart from Versailles for Fontainebleau (reflecting the seasonal movement of the court). It specified that Dumas it was “not possible to satisfy him on this regard,” referring to his requests to the Marine. Instead, the Marine required Dumas to produce a certificate from the Île de France treasurer noting the exact date when he ceased to be paid for his appointment in the colony to determine the retroactive date to begin his “traitement” of 6000 livres. It also noted that he owed the military regiment associated with Île de France over 16,578 livres and that he was indebted to the Compagnie des Indes for over 35,119 livres. ANOM COL E 153, Jean Daniel Dumas, Unsigned ruling at Versailles, 5 October 1775.

⁴⁹⁶ ANOM COL E 119, Jean André de Ribes.

⁴⁹⁷ Entry for “Appointement,” *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers*, etc., eds. Denis Diderot and Jean le Rond D'Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed.), <http://encyclopedia.uchicago.edu/>, Vol. 1, 554.

BETWEEN ÎLES DE FRANCE

In both the Gaoulé and the Dumas cases, conflict was played out as a contest between royal and local power, respectively. However, these cases showed that these two directions of force would not always produce direct effects on each other. Instead, the banishment of Ribes to a deserted island and the dismissal of the Martinican administrators points to a third space, a zone outside French jurisdiction, to which judicial actors could move due to conflict or disaster.⁴⁹⁸

Once French subjects stepped off the land onto a ship (whether willfully or under duress), they were effectively cut off from political communities centered on the conseils that included local notables, magistrates, and administrators. Lauren Benton has argued for “the sea as a space of intersecting corridors” among early modern colonies and metropolises, in which common shipping routes became legal spaces themselves.⁴⁹⁹ Evidence from the Gaoulé and Dumas affair points to a different conclusion, however: that the Atlantic and Indian Oceans were understood as empty spaces, in which French jurisdiction was absent, not present. Though the ship captains for their respective forced voyages may have asserted a kind of sovereignty over these displaced administrators, in practice all of these people were dislocated from the French *royaume* as a whole, caught in a legal void from which they could only recover by re-establishing their links to a French jurisdiction (usually imperial jurisdiction by contacting Marine officials at Versailles) via interjudicial correspondence that could only be renewed by confirmation from the latter party.

⁴⁹⁸ ANOM COL E 119, Jean André de Ribes. One other personnel record exists for Ribes, but it is only four pages long and summarizes the key issues (conseiller status, passage to and from France) that arise in the other, longer case file. ANOM E 350, Jean André de Ribes.

⁴⁹⁹ Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, UK: Cambridge University Press, 2010), 110.

This pattern is also analogous to Sue Peabody's portrayal of slaves arriving in France, equipped to use French law in metropolitan courts, even though they came from a differently defined legal space outside it. Peabody has shown that though France and its colonies seemed to be separated by an impermeable legal barrier of the slave codes for the colonies and the free soil principle, there was actually important traffic across this divide as slaves challenged their status in France.⁵⁰⁰ In this case, however, French subjects who found themselves outside any French jurisdiction sought to work their way back in by accessing the nearest courts that they could find: colonial courts in these cases. Subjects like Ribes worked within France's *royaume* by hopping from one forum to another, whether in person (as Ribes did when he traveled from court to court in France) or via correspondence (like the letter Ribes first sent while under house arrest).

The forced movement of people from one colony to another was a pattern of transit in both the Atlantic and Indian Oceans that included slaves, soldiers, and indentured servants besides the exceptional cases of La Varenne, Ricouart, and Ribes. In French colonies, it was mediated by the colonial governors, who oversaw transit of passengers to and from the island: Bernardin de Saint-Pierre attributed a delay in travel between the Mascarenes to the absence of the Île de France governor, who was at Île Bourbon and could not give the order to allow him to travel.⁵⁰¹ Dumas was in a particular position to control when people were under French jurisdiction. He had also added to this power by making the militia commanders police the movement of planters even while on their plantations. However, cases like the Gaoulé show that local elites could force governors to relinquish that power by co-opting the power of banishment for themselves.

⁵⁰⁰ Sue Peabody, "*There Are No Slaves in France*": *The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

⁵⁰¹ Bernardin de Saint-Pierre, *Journey to Mauritius*, 184.

Banishment was a well-known practice in early modern France, especially for families who sought to separate themselves from a violent or recalcitrant relative. Voltaire was nearly arrested on a warrant sent by his father, an attorney in the Paris Parlement (like many colonial jurists in both Atlantic and Indian Oceans), who sought to disown him and send him to the French Antilles in the first decade of the eighteenth century.⁵⁰² Banishment from the colonies carried many of the same cultural assumptions and social outcomes as banishment from the metropole. In both cases, courts and families sought to remove an offensive person from a particular jurisdiction and space. By putting people on a deserted island or out to sea, colonial elites (whether the Martinican planters or the Mauritian governor) physically, symbolically, and legally put them outside the jurisdiction—and therefore protection and recourse—to French laws and personal ties within the French political community.

However, banishment from the colonies carried a much stronger sense of removal from society because there was an asymmetry in understanding of colonial and metropolitan spaces, the former most often characterized as disorderly and degenerate, the latter most often seen as the source of civilization and legal order. The banishment of royal officials in the Gaoulé inverted this trend by assigning the metropole the role of chaotic destination and the colonies as the place in which order needed to be (and could be) reasserted through drastic measures. In the Dumas affair, however, Dumas claimed his role as the stand-in for the king against Ribes (and, in a complementary case with slightly different dynamics, Poivre) and drew upon the metropolitan pattern of banishment by sending Ribes out to a deserted island—with no reference to a return to France or another French colony.

⁵⁰² Ian Davidson, *Voltaire: A Life*, 1st ed. (New York, NY: Pegasus Books, 2010), 9.

In the cases of Martinique and Île de France, banishment meant movement into a watery void, rather than another jurisdiction. In cases of criminal banishment from French territories there was an assumption that the person would have to fend for himself or herself in finding a new political community to join. This was also the case for Ribes, whose only intended destination was a deserted island. In the Gaoulé, however, France was the intended destination. Revolt leaders wished to put the unwanted governor and intendant back on the land from which they had originated, in some sense restoring them to a pre-conflict situation. In this case, the objective was the opposite of the Ribes case because it was very specific and had a territorial dimension.

The exile imposed by banishment mirrored fears of abandonment that were verified by frequent cases of shipwreck and capture on voyages between colonies and France, especially journeys around the perilous Cape of Good Hope to the Mascarenes. Traveling around the Cape of Good Hope was frightening, due to the frequent storms that affected the area. For instance, it was customary for French ship passengers and crew to sing the *Te Deum* after successfully passing through the cape and Mozambique Channel, especially during storms. In 1782, François Michalet arrived in Bordeaux on an English packet-boat, following a grueling journey to the Indian Ocean and back. He had been sent to Île de France to work as the intendant's secretary, but he never actually made it to the island. Instead, his ship traveled all the way around the Cape of Good Hope, only to be taken as a prize by an English ship he called "l'Annibal" (most likely the *Hannibal*). From there, the ship had taken him to Saint Helena, where he had been imprisoned for a month and then finally released onto another English boat headed to San Sebastián in Spain. Finally arriving in Bayonne, France, he traveled across land to Paris, where he requested royal support for his voyage back to Île de France and a gratification to cover the cost of his losses so far. Free passage to and from the colonies was a perk enjoyed by

royal employees and frequently requested by those, like conseillers, who only worked part-time for the crown as well as others who thought that they could prove their utility to the kingdom.⁵⁰³ Royal officials, however, argued (as they often did) that Michalet was not an official royal employee so he could not be reimbursed. As consolation, they did allot him a one-time payment of 185 livres to cover his expenses between Bayonne and Paris.⁵⁰⁴

Ribes and Michalet, as well as Ricouart and La Varenne, spent considerable amounts of time on the exposed waters of the central and south Atlantic. Michalet's close, but not quite direct, ties to the global network of royal personnel created a similar problem to the one faced by Ribes. Without the kind of personal ties that guaranteed royal recognition through employment or patronage, even people who worked directly for colonial government (whether as a prosecutor or secretary) could find themselves disconnected from those channels of communication and aid. Michalet's case also works as a foil for the spatial dimension of Ribes's dilemma. Like Ribes, Michalet spent a considerable amount of time in the South Atlantic, on the sea, as he tried to get into contact with metropolitan officials who could help him reach both dry land and French judicial services there. He, too, became stranded on a kind of deserted island, though one owned by a rival empire, the British.

Unlike Ribes, Michalet got reoriented toward Île de France very quickly. By 15 May 1782 a letter written from the French port of Lorient issued instructions for him to

⁵⁰³ Many of these requests can be found in the personnel records. For example, Tournachon de Sceincé, a conseiller assesseur in Cayenne's conseil, thought he deserved free passage in 1786, since he had invested 120,000 livres in the colony. ANOM COL E 380, Tournachon de Sceincé.

⁵⁰⁴ ANOM COL E 311, François Michalet. Michalet had worked around the Indian Ocean littoral before, as a commercial agent in Pondichéry for ten years. On a return trip to France, he met M. de Bellecombe, the former governor of Pondichéry, who offered to place him as the secretary for Chevreau, promising him his protection and support. Michalet headed back towards the Île de France, only to be captured by the English.

return to Île de France as Chevreau's secretary. On 18 December 1782, Chevreau encouraged him to go ahead and send Michalet on to Île de France.⁵⁰⁵ This may have been due to the fact that Michalet was employed as a secretary to the intendant, not as a key conseil official. Where Michalet could simply return under the approval of Chevreau, Ribes needed a superior of Dumas (in France) to request his reinstatement in Île de France. This contrast highlights some of the differences in the channels through which colonial participants moved: Ribes moved in more elite circles than Michalet, as with his contacts at Fontainebleau and ties to the Parisian legal community, but in some ways they were actually restricted. Michalet, on the other hand, was more vulnerable—he seems to have had fewer official contacts in Paris (instead working through connections on the ship from Pondichéry)—but it was easier for him to be returned to his original goal.

The legal geography of France's overseas empire was not a cohesive and continuous network. Conseils and the royal court were separated by thousands of miles and vast spaces that had no French jurisdiction, in theory or in practice. People like the Martinican administrators, Ribes, and Michalet linked these distant pieces together through their correspondence and physical movement among them, motivated by their knowledge of how the legal geography worked. They understood that the legal forums that could deal with their problems lay in specific places, like Martinique, Île de France, and France, but they used correspondence as a way of accessing those distant channels until they could arrive in person, whether in the conseil or the king's court, to make their case. Le Vassor de La Touche and Dumas likewise understood that they could use maritime space to detach their opponents from the French jurisdictions, disempowering them from working within it.

⁵⁰⁵ ANOM COL E 311, François Michalet.

SYSTEMIC FACTORS

The age of each colony and the geopolitical timing of the Gaoulé and Dumas affair made a difference in the rationale and success of these episodes. The Gaoulé occurred at a moment in which a set of creole families had been in place for nearly a century since the colony's founding in 1635 so they argued that their experience in local governance on the conseils made them better equipped to handle local crises than new governors sent from France. This convergence of local dissatisfactions had inordinate influence, however, because the French monarchy was also in a precarious position. Louis XV has only recently come to power: he was only five at the time of his accession and the first troubles in Guadeloupe in 1715 and seven when the Gaoulé broke out in 1717. The monarchy, in a transitional regency period, had less interest in dealing comprehensively with colonial issues than it would have during an era of muscular imperial expansion like the 1680s or later in the 1760s as it re-evaluated and redeployed imperial resources following major territorial losses.

Like the Gaoulé, the Dumas affair brought debate about the colonial and metropolitan dimensions of imperial rule to the foreground, but it occurred at a moment in which the Mascarenes needed the injection of royal support to renew the colonies' development as trading and agricultural centers. Following the loss of North American possessions at the end of the Seven Years' War in 1763, French personnel were sent from North America to the Indian Ocean colonies in an attempt to revitalize the East Indian sphere of French colonial interests. The Dumas affair coincided with the arrival of scientific expeditions, like Bougainville's global expedition, and engineers, like Bernardin de Saint-Pierre who wrote a critical narrative about the Mascarenes. As the monarchy rolled out new initiatives for economic and imperial growth in the Indian Ocean, the character of colonial governance was hardly predetermined and efforts by

local elites like Ribes indicated their desire to have a voice in the process by which those initiatives would take place.

Both the Mascarene and Antillean revolts were remarkable in the degree to which the colonial judicial order based on the conseils returned after the conflicts subsided. Colonial revolts were not unknown in other parts of the empire, but they tended to occur on imperial frontiers. As late as 1768 and 1769, revolts erupted in Saint-Domingue, France's youngest plantation colony (it was only officially ceded to France in 1697). However, they were especially prominent in the frontier regions of the western and southern provinces, areas that were still quite rural and isolated from the densely populated sugar plains of the northern province.⁵⁰⁶ Charles Frostin has argued that these chronic revolts indicate that Saint-Domingue's white population, from planter to wage laborer, exhibited a "constant insubordination" throughout the *ancien régime*. However, the Gaoulé and Dumas affair were characterized by calculated, not constant, defiance that relied upon alternative and complementary methods of legal and political protest, like the local assemblies and interjudicial correspondence, that existed alongside the conseils. While planter revolts in the first half of the eighteenth century constituted serious threats to the colonial order, the intensification of imperial wars by the middle of the eighteenth century meant that conseillers' interest began to align more and more with royal authorities who had the money and the manpower to defend the colonies (and thus the conseiller's plantations). Revolts like the Gaoulé and Dumas affair can thus be seen as

⁵⁰⁶ Charles Frostin, *Les révoltes blanches à Saint-Domingue aux XVII^e et XVIII^e siècles* (Paris: l'École, 1975), 13. For more on the regional variation within Saint-Domingue in the eighteenth century, and the distinctiveness of the southern province, see John D. Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (New York: Palgrave Macmillan, 2006), especially chapter one. Another revolt broke out in Louisiana in 1768 by French and German settlers who contested the cession of Louisiana to Spain following the Seven Years' War. However, this revolt was aimed at a foreign power, unlike the Saint-Domingue, Martinique, and Île de France conflicts, which illustrated tensions *within* the French empire.

formative periods in colonial history where colonial elites—especially creoles—defined the limits of their autonomy to a larger degree, while having it simultaneously challenged by an encroaching (but not always powerful) monarchy.

These two case studies illustrate large-scale debates about royal authority and local power at a very human scale. Personalities like Le Vassor de la Touche and Ribes resented overbearing military governors and sought to build coalitions of local elites who could counter misguided royal instructions. Though correspondence linked Martinique and Île de France to metropolitan France, personal interactions among local elites in and around the conseil setting were ultimately more important. Ribes's alliance with the Mauritian assembly and the unification of conseillers and notables like Labat in Martinique created forces (often armed) that constituted practical and serious threats to administrators, whose resources lay back in France.

In both the Gaoulé and Dumas affair, the number of people in the background is striking. Repeated references are made to many local notables as involved in these contentions even though the records tend to emphasize disputes between a few key players: Le Vassor de La Touche versus La Varenne and Ricouart; Ribes (and Poivre) against Dumas. Le Vassor de La Touche was only one of several Martinicans who had accompanied the administrators on their tour; Ribes was only the general prosecutor who objected to Dumas's instructions to a variety of Mauritian notables (mostly conseil members) who were supposed to participate in the *Te Deum* processions. Colonial revolts were community events that centered on the conseil members but were connected to municipal and militia organizations as well as to networks of *parlements* and court officials in France.

In each of these cases, conflicts revolved around questions of precedent that were not only legal and procedural, but also symbolic and processional. Dumas cared about the

Te Deum ceremony because it symbolized his role as the king-by-proxy. Ribes likewise had a stake in the procession because he feared that Dumas was taking that role too literally. La Varenne and Ricouart sought to follow the stipulations of the legislation with which they had been entrusted by registering and enforcing it via the Martinican conseil, but Le Vassor de La Touche and the other Gaoulé participants saw these actions (and the administrators' rejection of their petitions and peaceful, if armed assembly) as misappropriating royal authority and overturning a local pattern of assembly and hierarchy that was working without royal assistance. However, evidence like the pardon issued to Belair, Cathier, Dorange, Labat, and Bourgelas indicates that these conflicts took place in a community setting, especially among the elite planters who ran the conseils supérieurs.⁵⁰⁷ In both the Gaoulé and the Dumas affair, local coalitions of notables and syndics formed corollary groups to the conseils. They exerted pressure on the conseils via direct petition, as in the Gaoulé, and indirectly, through the support of conseil members like Ribes. In each colony, the conseils were embedded in a wider community of elite and nonelite whites, whether metropolitan or creole in origin.

The environmental challenges at the background of both the Gaoulé and Dumas affair defined life in the colonies during the eighteenth century. Hurricanes and provisioning crises could prompt colonial residents to seek recourse to the courts, through legal measures meant to stave off bankruptcy for example, and to the colonial government more generally through personal appeals and petitions gathered by local assemblies.⁵⁰⁸ On some issues, like nobility and tax exemptions, local elites needed royal

⁵⁰⁷ ANOM COL E 24, Belair, Cathier, Dorange, Labat, et Bourgelas.

⁵⁰⁸ Subsistence crises did happen in France, too, during this period, though the cycles of famine that characterized the medieval period had become somewhat less frequent by the eighteenth century. As in the colonies, French subjects depended upon royal regulation of bread supplies and considered the king responsible for provisioning, so much so that failures in this area were considered (especially in the early part of the French Revolution) as cause for political protest. For provisioning systems in France designed to

approval, but colonial investors and residents were willing to submit to metropolitan rules (and delays).⁵⁰⁹ On other matters, particularly the issues of provisioning, defense, and slavery, colonial elites argued that they were the only ones who had enough local knowledge to properly ensure and govern. These three issues were all interconnected. Provisioning undergirded the survival of non-slaves, and to a certain extent of slaves, too, keeping the island populations high enough to sustain the plantation colonial economy.⁵¹⁰ Defense included concerns about outside invasions but also internal rebellions sparked by the enslaved as well as marauding bands of maroons. Slavery permeated social, economic, and political calculations. For example, expeditions to Madagascar were almost always for both new supplies of food and slaves, linking provisioning and slavery into a single enmeshed economy.

Local crises were the most likely to prompt local resistance to metropolitan governors or conseil authority. Ironically, the best agricultural regions in the Antilles and Mascarenes also tended to be the most under-provisioned as land was devoted to cash crops like sugar and coffee rather than food staples. The French navy was good at building forts and roads, but it was terrible at ensuring the safety of trade routes and food supplies, so in an odd way it acted more like an army than a navy.⁵¹¹ Martinique and Île

prevent subsistence crises, see Steven Laurence Kaplan, *The Bakers of Paris and the Bread Question, 1700-1775* (Durham: Duke University Press, 1996).

⁵⁰⁹ For colonial nobility, see François-Joseph Ruggiu, "The Kingdom of France and its Overseas Nobilities" *French History* 25.3 (2011): 298-315.

⁵¹⁰ It was no accident that governors were frequently responsible for bringing new food crops to the colonies for slaves. For example, the Île de France governor La Bourdonnais introduced manioc to the Mascarenes in the 1740s for slave consumption. He also revitalized colonial agriculture with an aim of making the islands a provisioning station for military units traveling between France and South Asia. Allen, *Slaves, Freedmen, and Indentured Laborers*, 11.

⁵¹¹ Patrick Villiers cites strategies like flying neutral or foreign flags (*pavillon*), arming corsairs, and breaking blockades as other tactics devised by colonists to make up for naval weakness. Patrick Villiers, *Marine royale, corsaires et trafic dans l'Atlantique de Louis XIV à Louis XVI* (Dunkerque, France: Société dunkerquoise d'histoire et d'archéologie, 1991), 482.

de France were better situated at the center of Atlantic and Indian Ocean trading routes, respectively, but they were both out-produced by their complements of Guadeloupe and Réunion. Higher population densities and established plantations made it difficult to add provisioning grounds in places like Martinique. In both the Antilles and Mascarenes, frequent legislation on the cultivation of lands granted by the king pointed to an inadequate supply of staple food crops as well as a possible reluctance on the part of planters to make concessions profitable quickly enough.

Provisioning and defense had been issues in the domain of French royal authority, but colonial residents increasingly saw themselves as on their own when it came to planning for hurricanes and other crop disruptions as well as for external attacks, from which military strategists at Versailles were little help. The organization of local assemblies in both the Antilles and Mascarenes reflected grassroots efforts to deal with these challenges, while their interactions with the conseils showed that local initiatives could be met by a range of reactions, from the support of Ribes and Hauterive to the dismissal of Dumas and Crapado.

These two episodes illustrated two different logics for dealing with colonial crises. The Gaoulé illustrated the coalition of local elites against imperial administrators who arrived from the metropole. This strategy favored cutting off metropolitan control of the colonial political economy completely, rather than negotiating with imperial representatives. Major conseil and planter families like Le Vassor de La Touche did not hesitate to question royal authority and to assert their autonomy. For them, it made sense to put royal administrators outside the protective boundaries of French jurisdiction in the colony, claiming a certain sovereignty for themselves.

In the Indian Ocean, the Dumas affair erupted from a similar conflict between local and metropolitan elites, but local elites like Ribes chose to circumvent rather than

defy the metropolitan representative by appealing directly to ministers in Paris. There, administrators like Dumas (and Poivre) thought their decisive and aggressive tactics were appropriate as they sought to create a roadmap for new crops and trade and a reinvigorated French military presence in the Indian Ocean. Local elites like Ribes gathered support from the local assemblies (as in the Gaoulé), but when this strategy proved inadequate with the banishment of Ribes, they drew upon their knowledge of the empire as a whole to find alternative forums, even appealing personally to ministers at Versailles.

On the one hand, the extenuating circumstances in the background of this crises were peculiar to the colonies—both the Mascarenes and the Antilles—and distinct from metropolitan problems. Provisioning crises did affect metropolitan France throughout the eighteenth century (bread riots famously figuring in early stages of the French Revolution), but they never reflected the same kinds of physical and imperial isolation faced by the colonies. Likewise, the constant threat of imperial takeover that motivated such independent actions by the Martinican notables and such heavy-handed rule by Dumas were unique to islands that were at the center of busy, rich, and constantly disputed regions of European imperialism. In these areas, these conflicts were specifically colonial and reflected local fears about becoming isolated, hungry, and defenseless against nearby opponents and a faraway imperial defensive force.

Planter revolts were persistent though unpredictable features of Antillean and Mascarene history during the eighteenth century, much like the hurricanes that frequently ravaged the islands. A lack of imperial support pushed administrators and local elites—usually constituted as *conseils supérieurs*—to act independently. In cases like the Dumas affair and the Gaoulé, the *conseils* became the *de facto* government of Île de France and Martinique, backed by local assemblies of notables. In the Antilles, these assemblies had

the critical mass of notables that was needed to counter royal instructions from across Martinique and Guadeloupe. In the more isolated Mascarenes, interjudicial correspondence was a more important factor that extended local complaints as conseil members like Ribes sought outside support for their actions and against royal administrators.

However, these conflicts also tracked with metropolitan concerns about the dimensions and quality of French political power. In both the Dumas affair and the Gaoulé, colonial participants sought audiences in Paris to protest their treatment and insist upon their innocence. The Gaoulé participants (unlike Ribes) did not visit the royal court themselves, but they used the interjudicial method of correspondence with the Marine to introduce a competing narrative to the report of insurrection that La Varenne and Ricouart were certain to give. Ribes, too, used interjudicial correspondence to forestall accusations from a metropolitan representative, Dumas, and to jump across jurisdictional boundaries to reach a metropolitan audience. He supplemented this strategy by visiting the royal court at Versailles, Compiègne, and Fontainebleau, circumnavigating the legal geography of France's *ancien régime* empire in person as well as via letter.

More than the Gaoulé, the Dumas affair can also be seen as a metropolitan controversy, especially among Dumas, Ribes, and Poivre. Gaoulé participants started from a position in which they were less tied to the court in France and law courts like *parlements*, so their strategy was to make their own informal assembly as an alternative to the conseil. This move kept the affair within the realm of the colony, the local setting, rather than reaching across the Atlantic. Their banishment of Ricouart and La Varenne also enforced a boundary between the metropole and colony that Ribes spent his time trying to break down. In the Dumas affair, however, all three officials had significant

experience in the highest circles of French royal authority and all three had contrasting ideas about how their share of that authority should be enacted in Île de France. In this sense, Île de France was just as French as the metropolitan Île de France that contained the courts at Versailles, Fontainebleau, and Compiègne where Ribes later took his case.

However, the existence of local assemblies in both Martinique and Île de France points to a longstanding pattern of homegrown forums that were designed to deal with the problems that colonial notables thought were important. The movement of people like Ribes and Le Vassor de La Touche from the assemblies to the conseils and back indicated that the assemblies were not meant to replace the conseils, but rather that they could be called in to provide an unsanctioned (by the king) but locally legitimate forum when conseils did not do the job that the notables expected.

The difference was whether or not metropolitan administrators would be included. As the official heads of the conseils, the governors and intendants were required to be included in their proceedings. Locally organized assemblies, however, could draw upon the legal expertise of people like Ribes and the other magistrates, but they could exclude the administrators whom they saw as blocking judicial and administrative processes.

Revolts

In Martinique, an uprising of local elites known as “Le Gaoulé,” culminated in the expulsion of the island’s governor and intendant. In Île de France, resistance by court officials like Ribes sparked the rage of imperial officials, prompting their banishment. In both kinds of conflict, conseils formed the objects through which both local and metropolitan actors debated and contested the meaning and function of law in colonial contexts. Conseil courtrooms were specific places that colonial subjects could visit to deal with conflicts. However, conseils could also be stretched to include and align with other groups of local elites when conflicts erupted among members of conseil

communities. Grassroots organizations like the assembly of notables and syndics pushed for more autonomy and against conseil rulings and laws that they disliked, often via conseil liaisons like Ribes and Collart. Conseils could also be stretched toward metropolitan France, as Ribes and the Martinican administrators sought to take their grievances from the conseil to higher authorities.

Mutinies on land (as well as at sea) were a continual risk for new colonies that often depended upon the abilities of a designated leader, usually the governor, to help the group navigate unexpected difficulties like natural disasters, hurricanes and volcanic eruptions being significant threats in both the Antilles and Mascarenes. In the Antilles, local revolts were endemic in the seventeenth and early eighteenth centuries. Early revolt participants were frequently pardoned and given general amnesty.⁵¹² They grew less frequent as the colonies became increasingly dependent upon French military support and as colonial elites grew more and more enmeshed in Atlantic networks of political power through patronage, education, and transatlantic legal careers.⁵¹³ Creole demands for autonomy became bound up in a transatlantic conversation about colonial law, articulated by jurists like Dessalles, Petit, and Moreau de Saint-Méry that circulated beyond the Antilles in the form of printed legal codes and commentaries.

In the Indian Ocean, the Mascarenes were isolated enough that local disputes could break out as in the Antilles, creating situations in which local elites had to work out solutions to their problems, even if it meant simply banishing whoever lost in the conflict. However, they were more isolated than the Antilles in that victims of the conflict like

⁵¹² See, for example, the general amnesty granted to the inhabitants of Tortuga and Saint-Domingue in 1671. ANOM COL B 3 F° 75, 10 October 1671.

⁵¹³ For more on this pattern, especially as it can be traced through a growing legal literature, see chapter five. For more on the background of colonial elites, especially magistrates and administrators, see chapter two.

Ribes were forced to call upon royal aid, even waiting for a letter to reach Paris (a six-month journey away). Local elites thus depended much more on royal ties, lacking the local legal community that was large enough and self-sufficient enough to counter royal claims in a similarly strong fashion. Instead, they preferred to work with royal connections at Versailles, linking the Mascarenes into a globally-stretched legal geography that was much more cosmopolitan and less regionally defined.

CONCLUSION

Colonial justice was forged by conseil personnel and local elites who often found creative solutions to problems like personal competition, provisioning crises, and unwanted trade restrictions by using a variety of strategies both within and outside the conseils. Conseils were staging areas for conflicts between (and among) local and metropolitan interests that could extend into the countryside, as with Ribes's connection to Yardin and other Mascarene syndics and La Touche and Hauterive's ties to both the Martinican conseil and local assembly. Conseils were also gateways to metropolitan France, as conseil membership gave Ribes and The Gaoulé and Dumas affair show that a range of personal and political contests could center on the conseils but then spill out into both other judicial spaces (like metropolitan *parlements* and royal offices) or into a different kind of space that lacked any legal community or jurisdiction, the "deserted islands" in between.

Conseils were the central site of colonial governance in France's early modern empire. Whether located in Martinique or Île de France, they were fragile institutions that depended upon the cooperation of a group of local elites and metropolitan administrators. Individuals involved in the conseils were vulnerable to personal attacks and disaster. Fractures within the conseil pointed to wider fissures extending throughout colonial society, especially over questions of membership. When that happened, colonial society

depended upon the ability of people like Ribes and Dumas, Le Vassor de La Touche and Ricouart, to work out their differences and define a kind of creole civility. Otherwise, each of these parties (and, in a way, colonial society as a whole) risked being cast onto an “île deserte” of jurisdictional ineligibility that could cripple their ability to make decisions and obtain legal services like arbitration.

However, even those who were pushed out of French legal spaces took advantage of a common legal geography and patterns of correspondence to reinsert themselves into the *royaume*, whether they were in the Antilles or the Mascarenes. Lauren Benton has argued that the Indian and Atlantic Oceans were separate “legal regions” or “regional regulatory spheres” beginning early in the eighteenth century.⁵¹⁴ However, France’s overseas legal geography connected these spaces into a whole that was coherent, if joined most often by the metropolitan core centered on the Ministry of the Marine at Versailles. The *Code Noir* was applied to both the Atlantic and Indian Oceans and legal correspondence circulated simultaneously throughout these two regions. Likewise, a complementary set of courts, the *conseils*, created a standardized, if locally defined constellation of legal forums whose components were defined by French sovereignty and jurisdiction, creating recognizable forums (often even physically in terms of their architecture and layout) that were accessible to French subjects, even those who traversed the legally undefined spaces between *conseils*.

⁵¹⁴ Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, UK: Cambridge University Press, 2010), 137.

Chapter Five

Codifying the Law: Creating a “Tableau Législatif”

*“There is perhaps no country in the universe
where there exist more laws than in the colonies.”*
– Pierre-François-Régis Dessalles⁵¹⁵

*“Nothing must be so dear to Men as the Laws
destined to make them Good, Wise and Happy.”*
– Attributed to Montesquieu⁵¹⁶

In 1786, the French colonial magistrate in Martinique, Pierre Dessalles, declared that laws composed a legislative landscape, or “tableau législatif.”⁵¹⁷ This metaphor conveyed the idea of a natural legal order, in which royal subjects could live within a realm governed by an order of laws that were adjudicated through local courts like the *conseils supérieurs* and guaranteed by the king. Laws, if properly articulated in organized, rational codes, could display the natural order of human relationships with each other and with the environment. They could also provide a blueprint for magistrates who sought to correct the errors within society that constituted crimes and civil disputes. During the long eighteenth century, from the Colbertian reforms under Louis XIV in the 1670s and 1680s to the revolutionary era beginning in the 1780s, French magistrates and administrators across France’s early modern empire sought to create legislative *tableaux* that could model good governance from metropolitan centers like Paris and the

⁵¹⁵ “Il n’est peut-être point de pays dans l’univers où il existe plus de Loix que dans les Colonies.” Pierre-François-Régis Dessalles, *Les annales du conseil souverain de la Martinique*, T.1 V.1, 1st ed. Bergerac: J.B. Puynesge, 1786. Re-edited and reprinted by Bernard Vonglis, (Paris: L’Harmattan, 1995), vii.

⁵¹⁶ “Rien ne doit être si cher aux Hommes que les Loix destinées à les rendre Bons, Sages & Heureux.” Attributed to Montesquieu, Médéric Moreau de Saint-Méry, *Loix et constitutions des colonies française de l’Amérique sous le vent*, 6 Volumes, (Paris: Chez l’auteur, 1784-1790), frontispiece for each volume. Also cited in the *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, eds. Denis Diderot and Jean le Rond D’Alembert, University of Chicago: ARTFL Encyclopédie Project (Spring 2011 Edition), Robert Morrissey (ed.), <http://encyclopedie.uchicago.edu/>, Vol. 9, 644.

⁵¹⁷ Dessalles, *Les Annales du Conseil*, T. 1, Vol. 1, vii.

surrounding Île de France to colonial outposts like Martinique in the Caribbean and Île de France in the Indian Ocean. In Île de France, Jean-Baptiste-Étienne Delaleu published his *Code des Isles de France et de Bourbon* eight years before Dessalles' code appeared.⁵¹⁸ Though these projects increasingly presented France's provinces and colonies as a single legal regime, it also created a fragmentation of legal authority as commentators like Dessalles used their distinct legal codes to advocate for regional autonomy and to lobby for royal reforms. This tableau was initially delineated primarily by the king as legislator, but by the end of this period codifiers like Dessalles had appropriated this role for themselves.

Though specific iterations, like Dessalles's *Annales du Conseil Souverain de la Martinique* in which he used the term "legislative tableau," often emphasized local social factors and the importance of local experts like Dessalles, early modern codification projects across France and its empire relied upon a similar set of naturalistic assumptions about how law worked. Colonial and metropolitan magistrates, increasingly trained in the same law schools, promoted a civil law system that ideally (if not always in practice) required them to simply apply laws based on written law texts.⁵¹⁹ On the one hand, this created a standardization of legal practices that made it easy for judicial personnel like

⁵¹⁸ Delaleu, *Code des Isles de France et de Bourbon* (1777).

⁵¹⁹ These projects culminated in Napoleon's Code Civil of 1804, which later became a model for civil law systems from Japan to Germany. For an introduction to the Napoleonic code, see Jean-Louis Halpérin, *The French Civil Code*. Translated by Tony Weir. (London: UCL Press, 2006). For the impact of these projects on France's Antillean colonies, see Jean-François Niort, ed. *Du Code Noir au Code Civil: Jalons pour l'histoire du droit en Guadeloupe, Perspectives comparées avec la Martinique, la Guyane et la République d'Haïti* (Paris: L'Harmattan, 2005). This increasingly bureaucratized French civil law system is often contrasted with the British emphasis on custom in its common law system during this period. Mindie Lazarus-Black, for example, has emphasized the degree to which English laws in Antigua and Barbuda in the Caribbean "rarely replicated English laws of the same period." Mindie Lazarus-Black, *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda* (Washington, D.C.: Smithsonian Institution Press, 1994). Scholars who work on the Code Noir (especially) have emphasized the degree to which colonial legislation and practices could differ, e.g. Niort, *Du Code Noir au Code Civil*. However, the codification projects analyzed here indicate that judicial elites aspired to legal uniformity—or at least transparency—regardless of whether they achieved it.

those discussed in chapter two to move among colonial and metropolitan courts. However, this also created opportunities for local legal experts like Delaleu and Dessalles to articulate their own ideas about judicial practices and to institutionalize conseil decisions for metropolitan audiences, rather than waiting for metropolitan instructions to arrive from the king and the Minsitry of the Marine. Like reform-minded *parlementaires* in metropolitan France, colonial jurists saw legal codes and commentaries as means by which they could contest state authority.⁵²⁰

In France's sugar colonies, this legislative landscape has been understudied as scholars have emphasized the degree to which the colonies were rife with piracy, shady bookkeeping, and blatant disregard for edicts rather than the degree to which the colonial state did maintain social order, collect taxes, and defend itself.⁵²¹ However, laws gave colonial residents and investors frames of reference from which they could decide how to do things like manage complex financial transactions and prosecute crimes. Over time, French colonial residents and magistrates became increasingly invested in a legal system

⁵²⁰ Metropolitan judicial negotiation is a well-known theme in the political and legal history of eighteenth-century France, but the colonial side has been virtually ignored. For the role of lawyers in these processes in France, see David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York: Oxford University Press, 1994). For publicized court cases, see Sarah C. Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993). For judicial politics within the parlements, see (as just one example out of many), e.g. Julian Swann, *Politics and the Parlement of Paris under Louis XV, 1754-1774* (New York: Cambridge University Press, 1995). For one study that examines the role of the *Code Noir* and judicial negotiation in a colonial context, see Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (New York: Cambridge University Press, 2012).

⁵²¹ For French colonies, see e.g. Kenneth J. Banks, "Official Duplicity: The Illicit Slave Trade of Martinique 1713-1763," in *The Atlantic Economy During the Seventeenth and Eighteenth Centuries: Organization, Operation, Practice, and Personnel*, ed. Peter A. Coclanis (Columbia: University of South Carolina Press, 2005), 229-251; *Chasing Empire Across the Sea: Communications and the State in the French Atlantic, 1713-1763*, 1st ed. (Montreal: McGill-Queen's University Press, 2006); Shannon Lee Dawdy, *Building the Devil's Empire: French Colonial New Orleans* (Chicago: University of Chicago Press, 2008). For British and Spanish empires, see e.g. Thomas M. Truxes, *Defying Empire: Trading with the Enemy in Colonial New York* (New Haven: Yale University Press, 2008) and Linda M. Rupert, *Creolization and Contraband: Curaçao in the Early Modern Atlantic World* (Athens: University of Georgia Press, 2012).

built on standardized judicial practices and a set of written laws that were consistent across France's empire.⁵²² However, this process created opportunities for local elites to interpret and manipulate laws to suit local variations as they participated in new codification processes. Like codifiers in other parts of France's *ancien régime* empire, they relied upon an increasingly common set of legal models that created a shared set of objects from which they could construct new legislative tableaux.⁵²³ Paradoxically, however, this more homogeneous legal culture created new challenges and conflicts as codifiers sought to make claims about local distinctiveness and resolve discrepancies between metropolitan and colonial laws.

Legal knowledge created in the conseils supérieurs was shared, interpreted, and politicized in colonial legal codes that were published increasingly frequently over the course of the eighteenth century. Kept in manuscript notebooks and court registers known as *greffes* and increasingly circulated via printed broadsides, laws were created and distributed around the empire in places like the Indian Ocean colony of Île de France and Dessalles's home, the Caribbean island colony of Martinique. In the Antilles, a substantial body of locally-created material expanded with the rise of print culture during this period and reinforced by the influence of local magistrates, while in the Mascarenes a much smaller collection of material was preserved through printed tracts supported primarily by magistrates who came from metropolitan France. Early administrators like the Île Bourbon governor Jean Baptiste de Villers had collected laws in their own records during the first decades of the eighteenth century, but only in the 1770s did printed legal codes appear. The Mascarene conseiller Jean-Baptiste-Étienne Delaleu published his

⁵²² For more on standardized judicial practices, see chapter three.

⁵²³ See, for instance, Sarah Hanley, "The Pursuit of Legal Knowledge and the Genesis of Civil Society in Early Modern France," in *Historians and Ideologues: Essays in Honor of Donald R. Kelley*, ed. Anthony Grafton and J. H. M. Salmon. (Rochester, NY: University of Rochester Press, 2001), 71-86.

Code des Isles de France et de Bourbon in 1777 in Île de France, which then went through several editions but was unaccompanied by similar projects by other codifiers as in the Antilles. By contrast, the first printed Antillean code appeared in Martinique in 1767 and other codes appeared every few years after that, as can be seen below in Table 5, Timeline of Colonial Legal Codes, with Other Major French Legal Works.⁵²⁴ As the Antillean families discussed in chapter two latched on to the conseils as nodes of power in the early development of these colonies, so too did Antillean jurists later secure political influence by producing many legal codes. Mascarene patterns of legal publication likewise followed from trends indicated by the composition of court personnel. Mascarene conseil members tended to be much more connected to global commercial families and tended to have a more cosmopolitan, rather than creole, outlook and so, too, did Mascarene legal codes.

Though fewer codes were published in the Mascarenes than the Antilles and those that were appeared at a later date, the emergence of printed codified law in all these parts of France's *ancien régime* legal regime in the second half of the eighteenth century points to a consensus among jurists that laws needed to be articulated and publicized. Fewer creole jurists lived in the Mascarenes than in the Antilles, as was shown in chapter two, so there was not a strong push for legal codes from local elites like Dessalles, but Mascarene jurists oriented more towards metropolitan France like Delaleu accomplished similar projects. Though jurists in the two regions differed in their motivations for writing colonial codes, they had similar objectives in producing well-organized collections of law that would be accessible to French audiences, no matter where they were located.

⁵²⁴ Jean Baptiste de Villers, "Registres des ordonnances," Île Bourbon, Compagnie des Indes Orientales Records, 1700-1710, Volume 4, Ordinances and Concessions (1701-1709), Mss 619, The New York Public Library; Delaleu, *Code des Isles de France et de Bourbon* (1777); Jacques Petit de Viéville, ed., *Code de la Martinique* (Saint Pierre, Martinique: P. Richard, 1767).

Through the work of jurists in these colonies and in metropolitan France, codified laws and accompanying legal commentaries became sources and catalysts for critiques of the *ancien régime* that intensified up until the collapse of the regime with the outbreak of the French Revolution in 1789 and the Haitian Revolution in 1791. By tracking these codes and commentaries over time, the circuits along which legal information traveled are revealed. Together, these sources created a series of legislative tableaux as they sought to capture, explain, and reform the complex choreography of justice constituted by French subjects across the empire.⁵²⁵

Though they are familiar artifacts and sources for the history of France and its colonies in the eighteenth century, colonial legal codes like the *Code Delaleu* were a static, fixed form of colonial legislation that captured a process of legal negotiation that took place in colonial as well as metropolitan spaces. This process occurred in the colonies themselves in the physical space of the courtroom and then the greffes reflect the recording of those decisions, from which codifiers like Dessalles and Delaleu made their compilations. In fact, colonial codes originated out of conseil meetings in places like Fort Royal, Martinique and Port-Louis, Île de France. The laws that together made up the rational “tableau législatif” described by Pierre Dessalles and others were worked out in the much messier setting of the conseils supérieurs.

PROCESSES

The processes by which legal knowledge forged in the conseils generated wider audiences and participation occurred in two phases over the course of the long eighteenth

⁵²⁵ Sarah Hanley has explored the proliferation of legal guides and dictionaries that paralleled the development of print culture, but I have yet to come across guides or dictionaries for the colonies though they may have existed. Hanley, “The Pursuit of Legal Knowledge.”

century, divided roughly at the time of the Seven Years' War between 1754 and 1763.⁵²⁶ Before this time legal knowledge was primarily produced in France and then distributed to colonial conseils where it was deposited into the *greffes* and kept in manuscript form. This era was characterized by an assumption that law, and the authority that made law binding, were contained in these manuscript registers and anchored in the specific setting of the conseil chambers. Court hearings derived their importance from these registers sitting nearby, so French subjects acquired legal knowledge directly generated through these settings. By the middle of the eighteenth century, French subjects developed a new understanding of legal knowledge that depended more upon the construction of legislative tableaux like the one described by Dessalles. In this conception, law depended less upon place than upon organization and context with other laws as presented especially in a wave of printed legal codes that appeared beginning in the 1760s. The primary production of legal knowledge shifted from the monarch to experts like the conseillers, who appropriated both the roles of legislator and interpreter. They based their claims to legal authority on their own experience in adjudicating cases and their familiarity with the law, rather than upon the location and authority embodied in the text itself. Legal knowledge continued to be created in the metropole at Versailles through royal edicts, ministerial instructions, and adjudicated cases, but colonial jurists were increasingly involved in these metropolitan legislative processes. Colonies and

⁵²⁶ This divide in the history of the long eighteenth century for France and its empire has been confirmed across several areas of scholarship, though it is uncertain whether for the same reasons (e.g. the Seven Years War from 1754-1763, which might satisfy fans of *histoire événementielle*, though it is less satisfying for scholarship, like this study, that looks at longer chronological spans). For example, Sue Peabody and John Garrigus have both noticed that racial categories became more rigid in the second half of the eighteenth century in two studies that look at France's early modern empire from European and Antillean vantage points, respectively. Likewise, the Sue Peabody, *"There Are No Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996); John D. Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (New York: Palgrave Macmillan, 2006).

metropole became bound more and more into a global legal regime that was anchored by the conseils as judicial entrepôts scattered across France's *ancien régime* empire.

The codification and spread of legal knowledge illustrates five processes within colonial societies and French society at large. First, a rise in legal print culture amplified voices and processes that were already going on through the world of manuscript and oral culture in and around the courts themselves. Though legal knowledge was initially understood to be anchored in the courtroom space itself, especially in the *chambre de greffe* where court records were kept, it was acquired and transferred into courtrooms and out into the towns and rural areas of colonies and France through word of mouth by *huissiers*, or town criers, and court participants. However, as printing became more common in the colonies, these processes became visible in new ways as published laws began to appear in public places and legal codes began to circulate among the different parts of France's empire. This process was less important for the technological changes it supported than for the epistemological shift it reflected. An earlier concentrated and corporate model of knowledge based on the site of the conseils and the interactions of people around the conseil was increasingly displaced by a more diffuse model of knowledge that depended upon individual possession of and familiarity with the law acquired through printed and circulated legal texts.⁵²⁷ In both models, legal authority was centered on the conseils, first as a space endowed with authority by the law and then as law endowed with authority by legal experts who worked in the conseils.⁵²⁸

⁵²⁷ For an analysis of the melding of print and manuscript cultures in a different context that raises interesting questions for this period, see Andrew Gow, "Challenging the Protestant Paradigm: Bible Reading in Lay and Urban Contexts of the Later Middle Ages," in Thomas J. Heffernan and Thomas E. Burman, eds., *Scripture and Pluralism: Reading the Bible in the Religiously Plural Worlds of the Middle Ages and Renaissance* (Leiden: Brill, 2005), 162-191.

⁵²⁸ To put it another way, the locus of legal authority and the medium by which it was conveyed switched roles.

Second, colonial codification projects expressed a desire for certainty among jurists who understood how fragile was both the *ancien régime* judicial system in general (and which was increasingly plagued by internal tensions and external critiques) and the volatile colonial economies over which they presided. Codification projects were actually attempts to stabilize, rather than perfectly capture, the legal framework of imperial France. Dessalles' iteration of the Martinican legal code traced the development of major legal concepts of the colonial French Caribbean and thus gives us a concise overview of colonial law and legality as colonial elites perceived it. This civil law code⁵²⁹ actually emphasized the dynamic and pragmatic nature of colonial law rather than static legal doctrine—even at the prescriptive and theoretical level. Likewise, the Mascarene code created by Delaleu was meant to preserve existing legislation that was in poor condition rather than to issue a new legal code, as had the wave of legislation issued in the Colbertian reforms of the 1670s and 1680s.

Third, this literature alluded to desires among colonial subjects and participants for consistency between metropolitan and colonial standards of justice that would take into account French legal traditions and make those resources available to French subjects no matter where they happened to live. Though nonelite litigants and defendants like Magdeleine Françoise and Pitre Paul from chapter three desired and benefited from legal standards that could be applied in both colonial and metropolitan (appellate) contexts, it was the class of conseil jurists who were the most invested in making sure that French standards applied across jurisdictions and they were simultaneously the best situated to make claims to that purpose.

⁵²⁹ However, it is helpful to note that Dessalles did not distinguish among criminal, civil, and administrative laws in the *Annales*, though separate codes for cases prosecuted by the state (criminal), private cases arbitrated by the state (civil) and procedural laws did exist at the time.

Fourth, the production of legal knowledge, though theoretically emanating from the monarch and his ministers, was increasingly outsourced to legal experts. As jurists published legal codes with commentary, they appropriated the role of legislator and presented the tasks of legislation and interpretation as simultaneous. Laws and commentary placed on the same pages in books authored by colonial magistrates made clear the correlation that these magistrates increasingly made between their powers to legislate and to adjudicate. A governing class emerged in the colonies in the eighteenth century (as explained in chapter two) who shared a common background of legal training and practice in France and which was connected to the metropolitan judicial ruling elite through the most important Parisian law courts, the parlement and Châtelet.⁵³⁰ As some of these jurists began to publish legal codes, they signaled that this group increasingly based its claims to authority on its legal expertise, rather than a common background in the colonies or metropole. For them, a common legal culture bound metropolitan France to its overseas colonies and was anchored by the conseils supérieurs as judicial entrepôts within the overall legal geography of France's *ancien régime* empire.

Fifth, colonial legal initiatives expressed local concerns and arguments for autonomy within the French empire that often appeared simultaneously with demands for alignment with the metropole even as they seemed to contradict metropolitan legal norms.⁵³¹ Legal pluralism, as a hybrid of practices across ethnic, imperial, or other lines, did not often appear in these discussions. Instead, debates about legal norms and practices revolved around which ones would be more properly French, articulating a kind of legal

⁵³⁰ For more on this pattern and Andrews's concept of "themistocracy," see chapter two. Richard Mowery Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994), 269.

⁵³¹ E.g. on the legal status of slaves in France versus the colonies, though other issues also had the same dynamic. For this issue specifically, see Peabody, "*There Are No Slaves in France.*"

pluralism within France and its empire, rather than across imperial boundaries, that was meant to be mutually intelligible even if not consistent from metropolitan provinces to Atlantic and Indian Ocean colonial contexts.⁵³²

⁵³² This counters recent trends in scholarship that emphasize legal negotiation and hybridity across imperial legal regimes rather than within them, e.g. in Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge, UK: Cambridge University Press, 2002).

1667	F ⁵³³	Jean-Baptiste Colbert, <i>Ordonnance pour la réformation de la justice civile</i>
1669	F	Jean-Baptiste Colbert, <i>Règlement général pour les eaux et forêts</i>
1670	F	Jean-Baptiste Colbert, <i>Ordonnance criminelle</i>
1673	F	Jean-Baptiste Colbert, <i>Ordonnance du commerce</i>
1685	F/A	<i>Code Noir</i> (to Antilles)
1697	F	Jean Domat, <i>Les loix civiles dans leur ordre naturel</i> (Paris: P. Aubouin, P. Emery et C. Clouzier, 1697).
1701-9	M	Jean Baptiste de Villers, "Registres des ordonnances," Île Bourbon, Compagnie des Indes Orientales Records, 1700-1710, Volume 4, Ordinances and Concessions (1701-1709), Mss 619, The New York Public Library.
1723	F/M	<i>Code Noir</i> (to Mascarenes and Louisiana)
1748	F	Baron de Montesquieu, Charles-Louis de Secondat, <i>De l'Esprit des loix ou du Rapport que les loix doivent avoir avec la constitution de chaque gouvernement, les moeurs, le climat, la religion, le commerce, &c...</i> (Genève: Chez Barrillot & fils, 1748).
1767	A	Jacques Petit de Viéville, ed., <i>Code de la Martinique</i> (Saint Pierre, Martinique: P. Richard, 1767).
1771	A	Emilien Petit, <i>Droit public; ou, Gouvernement des colonies françoises d'après les loix faites pour ces pays</i> (Paris: Chez Delalain, 1771).
1772	A	Jacques Petit de Viéville, <i>Supplément au "Code de la Martinique"</i> (Saint Pierre, Martinique: P. Richard, 1772).
1777	M	Jean-Baptiste-Étienne Delaleu, <i>Code des Isles de France et de Bourbon, par M. Delaleu, conseiller au Conseil Supérieur de l'Isle de France et Procureur du Roi au Tribunal terrier de la même Isle</i> , 2 vols. (A l'Isle de France, de l'imprimerie Royale, 1777).
1778	A	Emilien Petit, <i>Dissertations sur le droit public, des colonies françoises, espagnoles, et angloises, d'après les loix des trois nations, comparees entr'elles ...</i> (Geneve, 1778).
1778	F	Nicolas Toussaint Le Moyne des Essarts, <i>Essai sur l'histoire générale des tribunaux des peuples tant anciens que modernes, ou Dictionnaire historique et judiciaire</i> , 3 Vols. (Paris : Chez l'Auteur, 1778).
1779	A	Anonymous, "Receuil des Loix Particulières à la Guadeloupe et Dépendances," (unpublished manuscript, ANOM FM F/3/236).
1783	M	Jean-Baptiste-Étienne Delaleu, <i>Premier supplément du Code de l'Isle de France. Contenant la Collection des Loix promulguées en cette Isle, depuis le premier Janvier 1776 jusqu'au premier Janvier 1783. Par M. Delaleu, Conseiller au Conseil Supérieur de l'Isle de France, & procureur du Roi du Tribunal Terrier de la même Isle</i> (1783).
1784-90	A	M. L. E. (Médéric Louis Elie) Moreau de Saint-Méry, <i>Loix et</i>

⁵³³ Location: F = France, M = Mascarenes, A = Antilles.

		<i>constitutions des colonies française de l'Amérique sous le vent</i> , 6 volumes. (Paris: Chez l'auteur, 1784-1790).
1786	A	Pierre-François-Régis Dessalles, <i>Les Annales du Conseil Souverain de la Martinique</i> (Bergerac: J.B. Puynesge, 1786).
1787	M	Jean-Baptiste-Étienne Delaleu, <i>Deuxieme supplement du Code de l'Isle de France. Contenant le Recueil des Loix publiées en cette Isle depuis le premier Janvier 1783, jusqu'au premier Juillet 1787 ; & l'Analyse sommaire de toutes celles renfermées dans ce Volume & dans les deux précédens. Par M. Delaleu, Conseiller au Conseil Supérieur, & Procureur du Roi au Tribunal Terrier, de l'Isle de France</i> (1787).
1788	M	Jean-Baptiste-Étienne Delaleu, <i>Premier supplement du Code de l'Isle de Bourbon. Contenant les Loix publiées depuis le premier Janvier 1776, jusqu'au premier Juillet 1787, ensemble celles qui avoient été omises dans le volume précédent. Par M. Delaleu, Conseiller au Conseil Supérieur de l'Isle de France, & Procureur du Roi du Tribunal-Terrier de la même Isle</i> (1788).
1807	A	Martin Durand-Molard, <i>Code de la Martinique</i> , 5 vols. (Saint-Pierre, Martinique: Impr. de J.-B. Thounens, fils, 1807).
1826	M	Jean-Baptiste-Étienne Delaleu, <i>Code des îles de France et de Bourbon, par M. Delaleu,...</i> 2e édition (1826).
1861-3	M	Delabarre de Nanteuil, ed., <i>Législation de l'île de la Réunion: répertoire raisonne des lois, ordonnances royales, etc.</i> 6 vols. (Paris : [s.n.], 1861-1863).
1866-8	M	John Rouillard, ed., <i>A Collection of the Laws of Mauritius and its Dependencies</i> . 9 vols. (Mauritius: L. Channell, 1866-68).

Table 5: Timeline of Colonial Legal Codes, with Other Major French Legal Works⁵³⁴

METROPOLITAN ARTICULATION, LOCAL APPLICATION

As the Bourbon monarchs attempted to consolidate their territorial claims in the seventeenth century, they sought to rein in frontier regions in France like Alsace and Roussillon and new colonies like Martinique, and later Île de France, by drawing these

⁵³⁴ In future revisions, I hope to expand this list to include more manuscript codes to account more accurately for continuities in the content and changes in the forms of legal codification over time.

regions into a common French legal regime.⁵³⁵ By the late seventeenth century, Louis XIV and his minister Jean-Baptiste Colbert embarked on an unprecedented series of judicial and legal reform under Louis XIV. Simultaneously, metropolitan jurists like Jean Domat began to collect and publish French laws as legal codes. Codification comprised both royal projects like Colbert's designed to delineate specific kinds of laws like the 1685 *Code Noir* for slaveholding colonies and the *Code Marchand* to govern all French trade as well as more comprehensive, though less specific, projects like Domat's.

This first era was characterized by laws issued from the metropole and enforced by colonial magistrates who were most often local "notables" who possessed a measure of wealth, military experience, and social status. Though the most famous example is the 1685 *Code Noir*, which governed slavery specifically, colonial law actually encompassed a much wider range of legislation issued from the king and his ministers at Versailles. During this period, legal knowledge was gathered and protected in the form of the conseil registers, or *greffes*, which were kept inside the *palais de justice* and consulted and copied as necessary. Law was localized during this era and local elites followed the law as they understood it without necessarily paying attention to metropolitan legal debates or relying on legal expertise gained in law schools. When disputes over laws broke out, like the *Gaoulé* and Dumas affair discussed in the previous chapter, local elites most often made good-faith arguments that they had done their best to follow the laws but complained that they lacked consistent instructions and feedback from the king.

The idea of a consistent legal regime was not unique to legal commentators with the Atlantic or Indian Ocean colonies in mind, however. Like the idea of the *conseils supérieurs* themselves, codification had its roots in the continental state-building processes that had occupied so much of the energy of Louis XIII and Louis XIV during

⁵³⁵ For context, see Map 1, The Conseils Supérieurs and Map 2, French Metropolitan Law Courts.

the seventeenth century. In a classic expression of seventeenth-century absolutist theory, Jean Domat extolled Louis XIV's benevolent reign over "l'empire de la justice" in the dedication of his compendium of French laws.⁵³⁶ While Domat did not mention the colonies specifically here, he expressed a common early modern conception of the king's dominion over all French territories as an extension and reflection of a larger divinely-ordered universe.⁵³⁷ Domat organized his work around the "natural order" of human social relationships from which he constructed a framework of increasingly specific laws, a framework that Dessalles would have recognized as complementary to his own "legislative tableau."

In Europe, early modern monarchs sought to consolidate their authority by grafting nobles and other middle elites into a rapidly expanding bureaucratic structure that required new laws as well as new methods of integrating regional systems.⁵³⁸ This process, fueled by an increase in availability of classical and other legal texts during the Renaissance and print revolution, encouraged jurists to undertake comparative projects that attempted to synchronize legal ideas both within a geographic space (e.g. France) and across time (e.g. classical Roman law with sixteenth-century Roman law⁵³⁹). During

⁵³⁶ "Épître," Jean Domat, *Les loix civiles dans leur ordre naturel*, 2nd edition (Paris: P. Aubouin, P. Emery et C. Clouzier, 1697), np. <http://gallica.bnf.fr/ark:/12148/bpt6k55297429>, Accessed 4 November 2011.

⁵³⁷ As Domat's phrase implies, this conception of empire emphasized consistent rule (by law) over a common French people more in line with typical definitions of nation-states rather than empire-states. For example, in Jane Burbank and Frederick Cooper's distinction, "The nation-state proclaims the commonality of its people—even if the reality is more complicated—while the empire-state declares the non-equivalence of multiple populations." Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010), 8.

⁵³⁸ See especially William Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (New York: Cambridge University Press, 1985); Steve Hindle, *The State and Social Change in Early Modern England, c. 1550-1640* (Basingstoke, Hampshire: Macmillan, 2000); Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State* (Ann Arbor: University of Michigan Press, 2004).

⁵³⁹ For a quick synopsis of Roman law during the early modern era, see Kathleen A. Parrow, "Prudence or Jurisprudence? Etienne Pasquier and the *Responsa Prudentium* as a Source of Law" in Anthony Grafton

the sixteenth through eighteenth centuries, jurists like Jean Bodin, Jean Domat, and Henri François d'Aguesseau sought to find order in this messy proliferation of laws and produced comprehensive works that outlined the nature of state sovereignty and imperial law. Jean-Baptiste Colbert (Louis XIV's finance minister) published versions of civil and criminal procedure in the 1660s and 1670s, while law schools began to define more rigorous curricula around law specific to the French state rather than more pan-European Roman and canon law concepts.⁵⁴⁰ Similarly, legal compilers in England (most famously, Blackstone) sought to codify and refine the common law system during the seventeenth and eighteenth centuries.⁵⁴¹

This well-known early modern phenomenon spilled over into European colonizing efforts, where aspiring imperialists appeared to have the opportunity to create law out of nothing—without the necessity of relying on (or competing with) historical precedent and existing law.⁵⁴² In the Atlantic and Indian Ocean sugar colonies, these objectives seemed easy to meet as these islands lacked large indigenous populations, which had been largely eradicated from French Caribbean colonies by 1674 and which

and J. H. M. Salmon, eds. *Historians and Ideologues: Essays in Honor of Donald R. Kelley*. (Rochester: University of Rochester Press, 2001), passim, but especially 61-2. For a discussion of the process by which French law was developed during this period, see Sarah Hanley, ““The Jurisprudence of the Arrêts”: Marital Union, Civil Society and State Formation in France, 1550-1650,” *Law and History Review*, 21.1 (Spring 2003): 1-40.

⁵⁴⁰ David Parker, “Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France,” *Past & Present*, 122 (February 1989): 41 and passim.

⁵⁴¹ Holly Brewer, “Age of Reason?” in Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2001), 330.

⁵⁴² However, this idea has been corrected by historians like Katherine Hermes, James Brooks, Ann Marie Plane, and Sergio Serulnikov, who have pointed out the many ways in which indigenous legal patterns merged with or otherwise informed European models. For a sampling, see the section of Tomlins and Mann, eds., on intercultural encounters, in *The Many Legalities*, 119-214 and Sergio Serulnikov, “Disputed Images of Colonialism: Spanish Rule and Indian Subversion in Northern Potosí, 1777-1780,” *The Hispanic American Historical Review*. 76.2 (May 1996): 189-226. For a more global perspective, see Benton, *Law and Colonial Cultures*.

did not exist in Île de France and Île Bourbon as these were previously uninhabited islands.⁵⁴³

In these laws, monarchs and their ministers sought to articulate objectives, evaluate the functioning of various parts of France's realm, and control what they perceived as the most likely outcomes of current patterns within this system. As they were recopied and collected in the colonial greffes and later published as legal codes, they also increasingly bore the imprint of subjects, from magistrates to litigants, who managed their application and interpretation. Colonial laws came from three primary sources: the king and his ministers, customary law, and local legislation. Alone or in meetings with his royal councils, the king could just issue laws and have clerks mail a copy to colonial administrators with the king's signature. Royal ministers in the Ministry of the Marine, which governed the colonies, could also issue regulations regarding day-to-day issues like the provisioning of military regiments. Governors and intendants could also issue local legislation on issues like hunting and agriculture.

In early modern France, several courts were considered as part of the king's council: the *Cour des Aides*, the *Chambre des Comptes*, and the *parlement*. In reality, all of these organizations, plus additional advisors chosen by the king, aided him in creating the royal decrees that became laws registered in the conseil greffes.⁵⁴⁴ Most often, the king issued laws as *arrêts*, or decrees, directly or through his advising bodies like the

⁵⁴³ Some edicts did pertain to the treatment of indigenous peoples, who were most often dealt with as foreign "nations." Madagascar, with a large and organized indigenous population of its own, is an interesting exception to this pattern that merits a fuller discussion in future research. For a brief survey of that island during this period, see chapters three and four of Solofo Randrianja and Stephen Ellis, *Madagascar: A Short History* (Chicago: University of Chicago Press, 2009).

⁵⁴⁴ Roland Mousnier, *The Institutions of France Under the Absolute Monarchy, 1598-1789*, vol. 2 (Chicago: University of Chicago Press, 1979), 130.

Conseil d'État. A royal order in September 1683, for example, expelled Jews from the colonies. This order was repeated in the opening sentences of the 1685 *Code Noir*.⁵⁴⁵

Though the *Code Noir* comprised one of several specific codes, like the *Code Marchand*, introduced as part of the Colbertian reforms in the 1670s and 1680s, the negotiation of this slave code by local slave owners and metropolitan administrators made it clear to colonial elites that legal codes needed to take colonial matters into account and that French law could not simply be issued from the metropole. Though scholarship on laws in France's colonies often focuses on the *Code Noir*, colonial subjects were actually invested in and aware of a much wider range of legislation and sought to influencing lawmaking processes through the conseils and the production of legal knowledge that occurred within and surrounding the courtroom space. This *Code Noir* was an early case of legal negotiation over a central issue, slavery, but it marked the beginning of a century of legal negotiation over many different issues.⁵⁴⁶

While the *Code Noir* was certainly one of the most influential set of colonial laws applied to French colonies, especially the Antilles and Mascarenes, a much wider spectrum of colonial laws existed that included but certainly was not limited to those concerning slavery. Scholarship that only accounts for these places in terms of the *Code Noir* neglects a richer context of social, political, and economic ideas expressed in colonial laws that were often very similar to (and even the same as) metropolitan laws. Slavery was a defining feature of these colonies, but it was by no means the only unique

⁵⁴⁵ Lawrence Counselman Wroth and Gertrude L. Annan, *Acts of French Royal Administration: A Calendar for Canada, Guiana, Louisiana and the West Indies: 1540-1790* (Ville Platte, LA: Provincial Press, 1999), 28; "Code Noir" in Sue Peabody and Keila Grinberg, eds., *Slavery, Freedom, and the Law in the Atlantic World: A Brief History with Documents* (Bedford/St. Martin's, 2007), 31.

⁵⁴⁶ Slave codes have generated substantial interest among historians who seek to understand the ways in which this coercive labor regime was institutionalized and formalized. For an approach that compares slave codes in the Caribbean from different empires, see Elsa V. Goveia, *The West Indian Slave Laws of the 18th Century* (Barbados: Caribbean Universities Press, 1970).

or interesting feature. Scholars have rightly focused much attention on the guidelines that shaped the lives of the majority population of these islands, but the wider legal context has been left missing which has made it difficult to understand colonial life beyond the clues given by evidence that deals solely with slavery itself.⁵⁴⁷

Monarchs and ministers issued laws directly to colonial administrators as correspondence that council members then registered in their greffes and publicized through word of mouth and large printed tracts. France's sugar colonies were key targets of *ancien régime* legal reforms under Louis XIV and Colbert in the 1670s and 1680s, becoming important sites in which French laws were enacted. For instance, in 1674 the colonies came under the jurisdiction of Parisian customary law. The Paris custom governed property relations and family rules (like marriage contracts) starting in 1673, while a specific *Code Marchand* (or Merchant Code) issued in 1673 included commercial laws. By 1767, the Paris custom was so well-known to Martinican council members that Jacques Petit de Viéville told his readers that it was not needed in his *Code de la Martinique*.⁵⁴⁸

The king and his ministers also issued specific instructions to the conseils in the form of edicts and *lettres-patentes*, or charters, for the initial establishment of colonies or the appointment of colonial governors. Surviving evidence from the Marine's collections imply that the Antilles and Mascarenes received similar amounts of attention in the form of these laws across the long eighteenth century, a contrast to the disproportionate

⁵⁴⁷ For three influential analyses of the *Code Noir*, see Louis Sala-Molins, *Le Code Noir, ou, le calvaire de Canaan*, 1st ed. (Paris: Presses Universitaires de France, 1987); Vernon V. Palmer, "Essai sur les origines et les auteurs du Code Noir," *Revue internationale de droit comparé* 50.1 (1998): 111-140; Ghachem, *The Old Regime and the Haitian Revolution*.

⁵⁴⁸ "Ces Loix, ainsi que la Coutume de Paris, qui est la Loi municipale des Colonies Françaises, sont dans les mains de tout le monde ; ainsi il seroit superflu d'en grossir cette compilation," Petit de Viéville, *Code de la Martinique*, i.

attention given by later legal codes and commentaries to the Antilles.⁵⁴⁹ For example, the primary collection of laws issued by the metropole to the colonies includes 196 edicts concern Martinique, while eighty-one have to do with both of the Mascarene islands, making the proportion close to two edicts on Martinique for every one on the Mascarenes.⁵⁵⁰ A search for “Martinique” yields 258 results total, including some edicts classified under the records for Guadeloupe and edicts that were issued simultaneously to all of the Antilles (including Saint-Domingue). A more open search for “Île de France” yields an additional ten entries, some filed under the collection for the *Compagnie des Indes orientales*. No additional arrêts exist for Île Bourbon besides those filed with Mascarene edicts. 3,868 edicts, decisions, ordinances, etc. make up Série A in total, making the proportion for each island under study out of the whole: Martinique (5%/7%), Mascarenes (2%/2%), with the first number calculating from the number of edicts categorized with the colonies and the second number accounting for all edicts that mention the colonies. Though neither the Antilles nor the Mascarenes garnered the majority of metropolitan attention, by this measure as well as the previous one, Martinique generated roughly twice the amount of royal attention as the Mascarenes.

French colonies depended upon the application of these royal decrees and other legislation through local judicial bodies.⁵⁵¹ This is an interesting contrast with British colonial experience and a classic contrast between France’s civil law tradition and

⁵⁴⁹ Contrast this example with the Moreau de Saint-Méry collection described below, in which Antillean conseils and laws were disproportionately represented.

⁵⁵⁰ ANOM COL A. For Martinique, I just counted the number of edicts related to Martinique. For the Mascarenes, I compiled all edicts filed under “Île Maurice” (for Île de France), Réunion (for Île Bourbon), and “Île Maurice et Réunion” (for both).

⁵⁵¹ In contrast to English colonies, which worked out laws through the meetings of local legislative assemblies. See for example William Rawlin, *The Laws of Barbados, Collected in One Volume* (London, Printed for William Rawlin, esq., 1699). Beinecke Lesser Antilles Collection, Hamilton College, Clinton, New York.

England's more customary system, in which legislation was a much more diffuse process than the French bureaucratic hierarchy. Most of the leeway given to French colonial administrators came in the form of adjudicating council cases, rather than in creating or modifying colonial law itself. French legal processes depended upon knowledgeable magistrates and court participants, creating a need for guides to local laws and policies like the colonial codes and conseil *greffes*, or registers, but which could be distributed more easily.⁵⁵² Similarly, the Mascarenes were under the governance of Parisian customary law (especially regarding property and marriages) while specific royal laws laid out guidelines for specific areas of procedure like criminal, civil, and maritime procedures. This included the era 1721 to 1767, when the Mascarenes were owned by the Compagnie des Indes.⁵⁵³

In addition to the laws they received from royal ministers and customary law, conseil members were authorized to make decisions about almost every aspect of colonial life. They could make police rules, enforce restrictions on the activities of slaves, and oversee duels. They regulated professions (like notaries, surgeons, etc.) and watched over commerce to make sure that it was legal and properly conducted. They also dealt with international crises like skirmishes with neighboring nations (like Malagasy tribes and Caribs) and decided how to punish smugglers, thieves, and murderers.

Even in the earliest stages of colonization, governors maintained records that included basic legislation, though these early registers were most often kept for the purposes of recording contracts like land concessions and ordinances that supported these local rights. Jean Baptiste de Villers was a governor of Île Bourbon during an early

⁵⁵² For more on the *greffes*, see chapter one.

⁵⁵³ Auguste Toussaint, *Early Printing in the Mascarene Islands, 1767-1810* (Paris: G. Durassié et Cie, 1951), 77.

attempt to colonize the island in the first decade of the eighteenth century under the auspices of the Compagnie des Indes Orientales. He compiled a short manuscript volume that documented both royal edicts issued by the king via the company's directors, on such topics as hunting and theft (key topics that appear in later editions of colonial law for the Mascarenes) and his personal additions to the law (e.g. officially allowing the construction of houses). However, this volume only included a couple of laws for each year from 1701 through 1709 and with the addition of the land concessions that were also registered in this manuscript and took up more space than the laws, but even then it only came to forty-one pages.⁵⁵⁴

However, a variety of means by which laws could be created was one factor behind the proliferation of colonial law over time. During the *ancien régime*, colonial councils were required to enforce a variety of royal decrees, codified laws, customary rules, and special colonial orders. In particular, the French crown wanted to keep the cash flowing from its island possessions, especially its lucrative sugar plantations.⁵⁵⁵ Conseil *greffes*, or registers, were thus critical sites in which laws, treaties, orders, and court cases (as precedent) were kept in a single physical location. Greffes were maintained as bound manuscripts, but court documents—and sometimes entire cases—were often copied from originals and integrated, or *collationné*, into the greffes. Most likely, the law collection of Martinican magistrate Jean Assier (discussed below) was actually a manuscript similar to the conseil *greffes* that had begun like Villers' collection of laws and contracts, but grew as colonial society became more complex and new laws were created. While legal codes

⁵⁵⁴ Villers, "Registres des ordonnances."

⁵⁵⁵ It kept a close eye on its Caribbean assets by prescribing and enforcing a multitude of economic protection laws, known collectively as the monopoly or "l'Exclusif." For more on this set of trading restrictions, see especially Jean Tarrade, *Le Commerce colonial de la France à la fin de l'ancien régime: L'évolution du régime de l'Exclusif de 1763 à 1789* (Paris: Presses Universitaires de France, 1972).

could be published and widely distributed, even if self-published small numbers, as with Moreau de Saint-Méry's collection, the greffes were maintained by court secretaries, known as *greffiers*, who inscribed new entries and organized them.⁵⁵⁶

PRINTING AND PUBLICITY

Early publicity of conseil decisions and laws depended upon the copying of manuscript sources and oral communication via town criers (*huissiers*) and public discussions in local cabarets and town squares until the mid-eighteenth century in the Antilles and the late eighteenth century in the Mascarenes, when printed broadsides and legal codes began to supplement these methods. Most legal knowledge was exchanged by conseil members and employees as handwritten documents. Conseil greffes were always created as handwritten documents. Correspondence among conseillers and the continual stream of letters between metropolitan and local elites also constituted a running transcription of imperial relationships and events.⁵⁵⁷ Unlike printing, which was a medium constrained by expense and government oversight, manuscript offered colonial participants a looser means of communication to more selective audiences.

Increasingly, however, colonial ordinances also included the provision that they would be read, published, posted, and registered by conseil officials. Martinican conseillers were instructed to publish new laws as soon as they received them, not just to register them in the greffes. Instructions often indicated that conseillers should "have the ordinances made published and posted without delay" to ensure that colonial residents followed them.⁵⁵⁸ This order corresponded with the requirement to register new laws in

⁵⁵⁶ For more on the greffes, see chapter one.

⁵⁵⁷ For British and Spanish colonial comparisons, see Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago: University of Chicago Press, 2007); Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham: Duke University Press, 2010).

⁵⁵⁸ "font publier et afficher sans retard les ordonnances." This stock phrase appeared in royal edicts issued throughout the kingdom, emphasizing two components of publicity: publishing (as making the edict

the conseil greffes to make them active as colonial laws. By this logic, colonial residents had to be made cognizant of new laws in order to follow them and they could only be held responsible for those laws of which they were aware.⁵⁵⁹

For the first fifty years of conseil practice in Martinique, magistrates depended solely upon the manuscript sources of the *greffes* and metropolitan correspondence for legal information, but by the 1720s, Martinique's intendant and governor requested a printer to be sent to them. According to the officials, Blondel and Feuquières, the appointment of a printer was necessary for the production of "factums and pieces of writing what are often badly written and full of errors"—of which they sent two examples to the ministry of the marine as proof. In 1726, a Sieur Devaux presented himself to them with the plan of establishing himself in Martinique as a printer. Blondel and Feuquières were delighted, so they gave him permission in 1726, with the exclusive privilege of printing in Martinique. They also gave him a shipment allowance of four tons on a royal vessel, presumably as cargo space for his printing press and materials. To further sweeten the deal, the intendant and governor also gave him an exemption on the *capitation* tax for eight of his slaves and also released him from all *corvée* (road maintenance) taxes.⁵⁶⁰ The royal government complied with the Martinican administrator's request and issued letters

known) and posting (as putting the information in an accessible location, e.g. on a broadside). For one example, see Jacques Petitjean-Roget, *Le Gaoulé: La révolte de la Martinique en 1717* (Fort de France: Société d'histoire de la Martinique, 1966), 236.

⁵⁵⁹ This argument, in fact, became a key point for creole jurists who advocated more colonial autonomy, especially in the second half of the eighteenth century. Knowledge, according to this Enlightenment-influenced platform, was a prerequisite for compliance. For some commentators, knowledge was almost a guarantor for compliance, emphasizing the role of reason in driving colonial subjects to follow (supposedly *reasonable*) laws.

⁵⁶⁰ In the Mascarenes, slaves often worked to fulfill these projects, apparently having been loaned out by slave owners who owed the tax. See, e.g. the Île de France conseil ruling of 7 August 1777 that allowed slave owners to claim indemnities for slaves who died by accident while working "by *corvées*" on public roads. ANOM FM F/3/211 Île de France, 391.

patent⁵⁶¹ to Devaux in October 1727. A report on these events from 1728 indicated that he did, in fact, print and distribute many things, impressing the governor and intendant that now everyone would know their duties (“s’imprime de connoistre ses devoirs”).⁵⁶² Administrators, rather than individual colonial residents, were thus the earliest promoters of printing as a way to make sure that legal knowledge could be shared and standardized.

The monopoly given to printers narrowed the source of printed materials in the colonies to a single person at a time, limiting the quantity of materials that could be produced and creating a clear site—the single printing office—from which documents could be obtained. A new printer was appointed in Martinique only upon the death of Devaux. In a later document, a Marine official noted that the same de Vaux who had been given an “exclusive” license for printing and selling books in Martinique in 1729 had died by July 1742, leaving the printing office vacant. The new intendant, De la Croix, and governor, Champigny, proposed to give the same privilege to a Sieur Sinson as a replacement, of whom they gave good testimony, and the marine minister who received this document signed it as “good” to affirm his appointment.⁵⁶³ The limitation of printing offices to one person allowed colonial administrators to control the spread of materials from their point of creation, blocking the creation and sale of anything that did not pass the government’s censorship.

⁵⁶¹ A legally-binding letter or order granting rights or privileges to a person or corporation, usually by a monarch.

⁵⁶² ANOM COL E 384 bis, Vaux, de. The latter part of the document is a bit confusing—were the administrators concerned that printing would get out of hand due to its popularity and result in the publication of seditious material? The possibility seems to have occurred to the administrators only after De Vaux began printing, at which point they would supervise him carefully (“qu’ils y tiendront severement la main”). An official license (*brevet*) as printer and bookseller was granted to de Vaux in 1729: ANOM COL A 25 F° 116, 8 February 1729.

⁵⁶³ ANOM COL E 132, Devaux. As noted above, there are two personnel files for the same de Vaux with slightly different spellings. For the sake of clarity, I spell his name as “Devaux” throughout.

While printed laws were quite common in eighteenth century France, printing was introduced to French colonies at a much later date than in other colonial empires.⁵⁶⁴ Early missionaries had written and published tracts, catechisms, and dictionaries in indigenous Caribbean languages in the seventeenth century, but these documents were always produced in the metropole to train missionaries who would travel to the colonies later. A catechism and Carib-French dictionary was published in Auxerre, France in 1664 by Raymond Breton.⁵⁶⁵ In the Antilles, printing presses appeared in the early to mid-eighteenth century, where printers were appointed by the king and required to allow the intendants to censor their publications.⁵⁶⁶ Guadeloupe similarly got its first press in 1765, to be managed by Jean Bénard (whose widow later took over), and presses were set up at Pointe-à-Pitre and Port-Louis by the end of the eighteenth century.⁵⁶⁷ Colonial newspapers appeared soon after the arrival of printing presses in French colonies, almost always produced by the same printers who had been granted royal licenses to reproduce official documents (and under the same kind of censorship laws). The first issue of the *Martinique Gazette* appeared in 1766, with shipping news, price indexes, and a

⁵⁶⁴ A few examples of dates printing began in various colonies will suffice for comparison: Mexico, 1539; Goa, 1556; Lima, 1584; Macao, 1588; Massachusetts, 1638. French colonies tended to be much later: Saint-Domingue, 1723; Québec and Louisiana, 1764, Île de France, 1767; French Guiana 1777; Île Bourbon, 1792. Toussaint cites 1767 as the date for Martinique, but De Vaux's case below shows that printing did, in fact, begin a few decades earlier. Toussaint, *Early Printing*, 121.

⁵⁶⁵ Raymond Breton, *Petit Catechisme, ou Sommaire de trois premieres parties de la Doctrine Chrestienne. Tradeuit du François, en la langue des Caraibes Insulaires, par le R. P. Raymond Breton Sous-Prieur du Convent des Freres Prescheurs de Blainville*. (Auxerre: Gilles Bouquet, 1664). Hamilton College Library, Beinecke Lesser Antilles Collection, Clinton, New York.

⁵⁶⁶ This is, of course, a big contrast to the British and Spanish American colonies and to France itself, whose print cultures began early and were flourishing by this time. For Spanish America, see Julie Greer Johnson, *The Book in the Americas: The Role of Books and Printing in the Development of Culture and Society in Colonial Latin America: Catalogue of an Exhibition* (Providence, RI: John Carter Brown Library, 1988). For British North America, see Hugh Amory and David D. Hall, eds., *The Colonial Book in the Atlantic World*, Vol. 1. *A History of the Book in America*, series edited by David D. Hall. (Chapel Hill: Published in association with the American Antiquarian Society by the University of North Carolina Press, 2000).

⁵⁶⁷ Toussaint, *Early Printing*, 25.

remarkable coverage of world events. It was published by the royal printer in Saint-Pierre, Richard. Printers were rare enough in the Antilles that readers of colonial documents quickly begin to recognize them by name, including Bénard in Guadeloupe, Richard in Martinique, and Mozard in Saint-Domingue.⁵⁶⁸

Evidence for colonial printers is difficult to uncover in all of France's *ancien régime* colonies, but specific cases show that these small numbers were created on purpose by royal administrators in France and the colonies who sought to control both the content and form of information circulated through colonial communities via printed documents. Eleven separate files exist in the personnel records for people specifically identified as printers, of which two are the same person, and another person can be confirmed as a printer via his file, so eleven people can be identified as printers for the French *ancien régime* empire in this collection.⁵⁶⁹ In nearly all of these files, royal license to print books went along with the privilege to sell them as well (as *libraires*). Seven of these printers and booksellers were commissioned for Saint-Domingue, two for Martinique, and one each for Guadeloupe and Saint Lucia. The Saint Lucia printer was the same as one of the Martinique printers, however. No printers or booksellers appear in the personnel records specifically for the Indian Ocean, though they may exist in the personnel records as having other professions.⁵⁷⁰ However, all of the colonies did have

⁵⁶⁸ ANOM BIB SOM d/RES/48. Guadeloupe's first newspaper appeared in 1788, according to Toussaint. Toussaint, *Early Printing*, 25.

⁵⁶⁹ The duplicate files are for a Sieur de Vaux, ANOM COL E 384 bis, Vaux, de and ANOM COL E 132 Devaux. The other person is André Joseph Craisme, who is listed as a postmaster but who was also a printer in Guadeloupe: ANOM COL E 98, André Joseph Craisme. The other printers (all in Saint-Domingue) were: Jean Louis Bourdon (E 47), Jean Donnet (E 135), Charles Louis Dufour de Rians, (E 147), Charles Fontaine (E 186), Louis Guillot, (E 215), Marie (listed with her sister, but without a last name, E 302), and Payen, (E 332). An additional search for bookseller (*libraire*) reveals an additional two people involved in bookselling, both of whom worked in Saint-Domingue, which, by the 1770s, had a thriving print culture including several newspapers. Jean Baptiste Barthélemy (E 18) and Pierre Brémant (E 51).

⁵⁷⁰ I have attempted to cross reference names of printers and booksellers from those listed in Toussaint, *Early Printing*, but have yet to make any successful connections.

printing offices by the mid-eighteenth century that were closely linked to local governments (including the conseils) by the high demand of administrators for printed edicts and conseil rulings and by the requirement that printers comply with the censorship of colonial intendants.⁵⁷¹

Legal knowledge circulated through similar networks in the Indian Ocean, but these networks were much more limited to local and transimperial relationships rather than the regional and transatlantic dynamics that characterized the Antilles. In the Mascarenes, printing presses were introduced in the mid-eighteenth century and were used for the sole purpose of disseminating legal information in the form of edicts and other public laws. Printing was introduced to Île de France by the intendant Pierre Poivre in 1767 and to Île Bourbon in 1792—just a few decades after printing began in the Antilles. In both regions, printing presses were introduced as a means to publicize conseil decisions and to disseminate legal information like case rulings and new laws. Printing in the Mascarenes, like the Antilles, was thus inextricably tied to imperial authority and legal knowledge, though in the Antilles, printing was also used for local newspapers and therefore spread other kinds of information (about the weather, commodity prices, etc.). This contrast highlights the regional connections and more sophisticated information-sharing infrastructure of the Atlantic colonies against the more isolated Indian Ocean colonies.

⁵⁷¹ It is likely that illicit printed materials circulated throughout the colonies. The repeated references to the authority (and responsibility) of enforcing censorship laws by the intendants implies that unapproved materials were circulated, most likely via Dutch and English entrepôts (as censored materials in France most often came from places like Amsterdam and London). I have yet to find direct evidence of illicit printed or manuscript material, however. For an introduction to illicit printing in France, a well-researched topic, see especially Robert Darnton, *The Literary Underground of the Old Regime* (Cambridge, MA: Harvard University Press, 1982). For more on how printing was regulated in France, see Jane McLeod, *Licensing Loyalty: Printers, Patrons, and the State in Early Modern France* (University Park: Pennsylvania State University Press, 2011).

Among the Mascarenes, the presses in Île de France were used much more frequently than in Île Bourbon, which lacked the technicians to run the presses properly.⁵⁷² Île de France's position as the dominant island of the two also appears to have created more need for a press. For these colonies as for the Antilles, printing had a primarily administrative purpose in contrast to the religious material that had been produced, especially by Portuguese and Spanish presses that had been taken to various Indian Ocean ports. French colonial printing in the Indian Ocean was thus even more exclusively connected to administrative objectives than it was in neighboring imperial centers or other French colonies.⁵⁷³

Printed materials demanded by the Mascarene governments also had a particularly commercial cast. One early broadside, from 1770, described methods to care for the new nutmeg and clove trees that Poivre had brought to Île de France.⁵⁷⁴ This document prioritized knowledge about agriculture, as promoted by the island's intendant and governed by several conseil edicts, that contrasted to the focus of Antillean printed materials on criminal cases and crimes. By the end of the eighteenth-century, printing was also used to create paper money in the Mascarenes to try to counteract the region's

⁵⁷² Toussaint, *Early Printing*, 8.

⁵⁷³ Ibid. Toussaint notes that only in the European Indian Ocean colonies of Île de France and Dutch Java did printing have such a strong secular theme. For the Mascarenes, this is most likely because the islands were not the focus of French missionary efforts in contrast to the Antilles. In the latter, missionary efforts almost always accompanied early expeditions while in the former, missionary groups focused on mainland areas like India and Indochina. For a survey of French missionary expeditions in the Antilles, see Sue Peabody, "'A Dangerous Zeal': Catholic Missions to Slaves in the French Antilles, 1635-1800," *French Historical Studies* 25.1 (Winter 2002): 53-90. This pattern may also allude to changes in French colonial priorities over time: while religious conversion was an important component of early colonization efforts in general, by the mid-eighteenth century and especially after the expulsion of the Jesuits in 1763, religious priorities were overtaken by scientific interests, as seen with projects like Pierre Poivre's botanical experiments, etc.

⁵⁷⁴ Toussaint, *Early Printing*, 83.

chronic shortage of silver Spanish *piastres*.⁵⁷⁵ This was another major topic that preoccupied colonial administrators and conseil magistrates, who frequently (and increasingly) advocated for monetary reforms to improve the quality and ease of the commercial transactions they carried out around the Indian Ocean littoral and in the Mascarenes. Rheims Rose, a conseiller and merchant in Île de France and Île Bourbon, had petitioned the minister of the Marine in the 1787s to offer his commercial and legal expertise for financial reforms. Though Mascarene residents hated the paper money, the continued insistence by the royal government on this form of currency ensured demand for printing.⁵⁷⁶

Printing did not create new legal pathways but rather increased the frequency and density of messages that could be sent—whether in broadsides, printed legal codes (discussed in a separate chapter), or other materials—through the movement of town criers (*huissiers*) to post these documents, correspondence among elites, and word-of-mouth discussion in the streets of colonial towns. The increasing production of printed documents, especially in the later half of the eighteenth century, signaled a desire to strengthen and expand the pathways by which legal knowledge could be dispersed throughout colonial communities, but it was an uneven process.⁵⁷⁷ These pathways were

⁵⁷⁵ A royal edict issued at Versailles 10 June 1788 called for the creation of six million livres in paper money for Île de France and Bourbon, including samples of what the printed money should look like. ANOM FM F/3/211 Île de France, 745.

⁵⁷⁶ ANOM COL E 359, Rheims Rose. Rose also presented a strong case against paper money in these letters, even offering a personal loan to the royal government in exchange for a shipment of silver *piastres*. For more on Rose and Mascarene conseillers, see chapter two.

⁵⁷⁷ In the colonies as in metropolitan France, the volume of printing rapidly increased during the French Revolution to keep citizens informed about the deliberations of the National and colonial assemblies. Delabarre de Nanteuil notes that a new printing office was founded in Saint-Denis, Île Bourbon in 1792 to publicize the revolutionary colonial assembly's deliberations, but it was not very successful as few decisions could be printed (though he does not specify whether this was due to their quantity or content). Delabarre de Nanteuil, ed. *Législation de l'île de la Réunion: répertoire raisonné des lois, ordonnances royales, etc.*, Vol. 1 (Paris : [s.n.], 1861-1863), vii. Online at nrs.harvard.edu/urn-3:HUL.FIG:001661640. Accessed 21 January 2013.

expanded simultaneously within and between France's colonies and metropole. In France, historians like Matthew Gerber have noted that "due to a broadening dissemination of French legal culture, popular access to law and state power increased over the course of the eighteenth century."⁵⁷⁸ Evidence from the Antilles and Mascarenes points to a similar process by which legal knowledge was increasingly spread beyond the conseils, though perhaps with less evidence of popular access to law and state power.⁵⁷⁹

Similar processes in France's overseas colonies have been largely ignored, however, and several historians have interpreted the early lack of printing in France's overseas colonies as a sign of intellectual stagnation and financial preoccupation.⁵⁸⁰ For the Indian Ocean, Auguste Toussaint has argued that a lack of printing signified a lack of intellectual awakening and cultural productivity that reflected a colonial society obsessed with quick profits at a great loss to humane activities like the creation of literary works.⁵⁸¹ Though white colonial subjects, often including local magistrates, sought speedy returns on their investments in slaves, plantations, and their produce, Toussaint's vision of intellectual development neglects the investment that colonial administrators (and court

⁵⁷⁸ Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France* (New York: Oxford University Press, 2012), 17.

⁵⁷⁹ The increase in printed legal culture discussed below was mostly pushed by local elites and very little evidence of popular printed material exists for the colonies beyond a few newspapers. This seems to have stemmed from the colonies' more distinctive social strata based on increasingly strict social and legal categories of race and citizenship, in contrast to a diminishing respect for traditional social and legal categories in France itself, like the three estates.

⁵⁸⁰ Printing has also been tied to explanations of France's failure to decisively conquer and maintain North America, a classic question for secondary work in the field of Francophone America. For Canada, Philip Marchand has documented the transition from visual and architectural sources (e.g. stained glass in cathedrals) to printed materials to emphasize the impact of the arrival of printing there only following British conquest in the 1760s. Marchand contrasts the embodiment of ideas through architecture and images with the more abstract medium of printed materials in a discussion of transitions to modernity. These contrasts frame his discussion of France's failure to fully conquer and maintain North America. Philip Marchand, *Ghost Empire: How the French Almost Conquered North America* (Westport, CT: Praeger Publishers, 2007).

⁵⁸¹ Toussaint, *Printing*, 75-6. According to Toussaint, literary production did not begin in the Mascarenes until the arrival of Bernardin de Saint-Pierre in 1768.

participants) made in the creation and maintenance of legal knowledge through court records, whether or not they were printed.⁵⁸² Likewise, the later timeline of Mascarene printing implies that local communities continued to depend upon older methods like the *huissiers* and community discussion to stay informed, rather than broadsides and newspapers that required a much more literate population.

However, the spread of legal knowledge from conseil *greffes* throughout colonial communities through printed broadsides *and* the movement of town criers (*huissiers*) and printers themselves provides evidence for a different process. Instead, which ideas about colonial law and jurisprudence circulated among colonial communities (and along imperial circuits) via first manuscript and then later and more quickly through printed sources that paralleled networks of administrative staff, from conseillers to huissiers to printers, and court participants like the Martinican Bordenave and his audience (from chapter one) who took legal ideas with them from the conseils supérieurs into the streets.

Specific professions like printer and huissier contributed to the extension of legal communities beyond the walls of each colony's *palais de justice*, pushing knowledge of conseil decisions and laws out from the confines of the conseil greffes into the wider community of colonial subjects. Colonial administrators, at least, did value and exert significant resources towards creating an intellectual framework for these societies based on colonial laws—as compiled and enforced in conseil meetings and recorded in the

⁵⁸² The truism of planters as focused on quick profits, in particular, has been applied to the Caribbean as well, especially for the early decades of colonial development, e.g. in Richard S. Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713*, 1st ed. 1972, New Ed. (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2000). I do not mean to deny that planters were often rapacious and short-sighted, but I hope to show that even planters and other colonial elites did have a logic and order to the way they carried out colonial business, specifically an investment in the local branches of the global French legal system that could be used to protect the stability of their fortunes.

conseil greffes—that could be disclosed to a wider public of colonial residents through printed materials.

Mobile populations of nonelites likely also shared knowledge that they had read on these broadsides and other printed sources. It is difficult to track literacy rates in the tropical colonies, though with overwhelming enslaved majorities and legal limitations on the education of those slaves it is not likely that literacy rates were ever very high during this period. Employees of the conseils appear to have been the most likely colonial residents to have been literate, due to their participation in the creation of manuscript and printed legal documents. However, nonelite artisans and workers may have gathered some literacy as they traveled from place to place and learned skills like navigation. Pitre Paul, an early eighteenth-century shipworker, testified that he had learned to read but not write with sailors in Bordeaux to the Île Bourbon conseil in 1725, implying that perhaps mobility if not status could contribute to higher literacy rates.⁵⁸³

Printed laws rarely appear in the conseil greffes as they were all copied into these manuscripts by the greffiers.⁵⁸⁴ They do, however, show up frequently in the collection of colonial legal codes compiled by Moreau de Saint-Méry in the 1780s.⁵⁸⁵ These codes were not printed and categorized like the works of Dessalles, Petit, Delaleu, and Moreau de Saint-Méry (the latter on Saint-Domingue). Instead, they were scrapbooks that contained every bit of legal information that Moreau de Saint-Méry could find on all of France's overseas colonies—from Pondichéry to Canada—organized by date. They included such diverse scraps as greffe extracts, printed edicts, and correspondence. Printed laws included in these collections are predominately from the royal printing

⁵⁸³ ANOM COL E 337, Pitre Paul.

⁵⁸⁴ Catalogued as ANOM 6 DPPC.

⁵⁸⁵ ANOM FM F/3.

office in Paris, so they provide evidence for legal knowledge created in the metropole about the colonies that does not often appear in colonial records themselves. This asymmetry implies that some legal information about the colonies was not always transmitted to them as quickly or frequently as it was diffused within the imperial governing centers of Paris and Versailles, especially in printed form.

One printed set of royal letters patent from 1767 was tucked into the Île de France collection of laws, in between handwritten references to ordinances from before and after its date. The law was issued regarding leftover receipts and other paperwork from the Compagnie des Indes, which had recently handed over control of Île de France and Bourbon to the royal government. The king emphasized his goal of giving colonial residents the protection of the monarchy, with the purpose of making them flourish (“pour rendre ces Colonies florissantes”) and to support agriculture (“la culture”) and commerce, especially with India.⁵⁸⁶ The text went on to detail the procedures for shifting over trading patterns (like payment procedures) to the new royal government, especially how the letters of credit (*lettres de change*) could be transferred under the new system—a crucial step in ensuring the continuance of commerce. The letters patent ended with a command for the document to be registered in the parlement (making it an active law) and enforced. The letters patent ended with a mandate to publish and copy the document in all necessary places, with an additional statement of royal authority, “Because this is our pleasure,” to be printed at the end of each copy in all capital letters.⁵⁸⁷

However, the law indicated that it was given at Versailles and registered in parlement, so it lacked direct reference to the conseil or the islands’ administrators.

⁵⁸⁶ ANOM FM F/3/210 Île de France, 244.

⁵⁸⁷ ANOM FM F/3/210 Île de France, 248. “Car tel est notre plaisir.” The word, “plaisir,” here implies will as well as desire, a classic articulation of the idea that the monarch’s prerogative was consistent with natural law and justice.

Instead, it was addressed from Louis XV to the conseillers in the Paris Parlement. On the one hand, this edict encompassed the empire from Versailles to the Mascarenes, and perhaps even further as scraps of paper, like letters of exchange, from the previous company regime were passed from imperial subjects into the hands of foreign traders. Yet the audience of the letters patent was restricted to parlement members *in France*, rather than extending to include the colonial magistrates and subjects to whom the new rules actually applied. Some colonial conseillers were members of the Paris bar and had practiced in the Paris parlement, so it is possible that colonial administrators also received this message, but the wording of the document indicates that they were not considered a primary recipient.⁵⁸⁸ A further factor limits the possibility that this document (or at least this particular copy) circulated in the Indian Ocean. The edict was printed at the royal printing office in Paris and this collection was put together by Moreau de Saint-Méry in France, so it is possible that this edict never actually made it to the Mascarenes in printed form.⁵⁸⁹

LOCAL COMPILATION, METROPOLITAN CONTESTATION

Following the Seven Years' War, a wave of new annotated legal codes appeared in the Antilles and Mascarenes, corresponding with an overall rise in print culture in France.⁵⁹⁰ These works framed France's legislative tableau on the basis of the logic and order of the laws themselves, which were often introduced by elaborate indexes and

⁵⁸⁸ For more on metropolitan *avocats*, the parlements, and colonial participants, see chapter two.

⁵⁸⁹ ANOM FM F/3/210 Île de France, 243-8.

⁵⁹⁰ Robert Darnton has noted that "By 1750 a large reading public had come into existence in all the urban centers of France, above all in Paris. By 1789, this public had developed an enormous appetite for news, and it derived its basic stock of information about the doings of the great through slander in the form of printed tracts...The population of writers also expanded enormously from 1750 to 1789..." Robert Darnton, *The Devil in the Holy Water or the Art of Slander from Louis XIV to Napoleon* (Philadelphia: University of Pennsylvania Press, 2010), 440.

tables of contents organized by topic or chronologies. Colonial jurists compiled and annotated these codes, which were then printed and circulated within individual colonies and in particular regions, like the Antilles and Mascarenes. In this era, a new generation of magistrates with specialized legal training from metropolitan law schools began to collect and interpret French laws for themselves. They relied upon their local experiences in the colonies as well as their familiarity with metropolitan legal debates to publish legal codes which appropriated the role of legislator from metropolitan governors and claimed a more active role in shaping the law itself. Colonial jurists simultaneously articulated and manipulated colonial history as they annotated the laws and produced a set of judicial histories that have become key sources for colonial history. Scholars have acknowledged the importance of these sources for revealing colonial history, especially for the early periods, but they have not taken into account the processes by which these sources were produced.

Two movements inspired these projects. First, the initial wave of codification in the late seventeenth century had created a body of common legal works that by the mid-eighteenth century constituted a familiar foundation of jurisprudence for legal professionals. By the mid-eighteenth century, many of the new colonial commentators styled themselves as heirs to the legal tradition of jurists like Jean Domat.⁵⁹¹ Metropolitan law codes like Domat's, standardized customs like the Paris Custom, and commentaries on the Colbertian reforms formed the basis of legal training within France. Creole magistrates who had been educated in metropolitan law schools sought to mimic these

⁵⁹¹ One other reason for this affinity might be the increase in judicial participation by non-nobles during the long eighteenth century. Domat never became noble and Richard Mowery Andrews speculates that Domat decided not to obtain nobility, even though it would have been easy for him to acquire. Historians like Andrews have linked this point to patterns of widening bourgeois involvement in jurisprudence, a trend reinforced by this colonial evidence. Andrews, *Law, Magistracy, and Crime*, 268.

well-known sources with colonial versions based on their own experiences adjudicating colonial laws as council magistrates, lawyers, and other officials.

Second, mid-eighteenth century commentators were likely inspired by Enlightenment projects like the *Encyclopédie* (published between 1751 and 1772), which sought to create new taxonomies for all kinds of knowledge that could be easily referenced by a wide range of educated readers.⁵⁹² The *Encyclopédie* was also a good model because it contained a substantial number of articles on topics related to jurisprudence, written by a metropolitan conseiller named Boucher d'Argis. These projects raised the possibility that legal knowledge could be indexed to make it more accessible, uncoupling jurisprudence from the spaces (like the conseils) in which it was practiced. These did not always have to be printed, but could exist in manuscript format alongside the codes that were reproduced many times. One example contained Martinican laws from 1629 to 1784 that were indexed chronologically and alphabetically and ran to sixteen volumes.⁵⁹³

Colonial commentators also argued that they were peers of new enlightened political theorists like Montesquieu. The latter's Bordelais background and dealings with the Bordeaux Parlement were also familiar to colonial planters and merchants who had often come from Bordeaux themselves and who routinely kept up trading relations with agents in that city. In fact, many conseillers moved in the same circles as Montesquieu and conseil members associated more with the Paris Parlement would have been familiar with Montesquieu and other new commentators through their legal training and the longstanding debates within their own parlement. Their writing constitutes part of a long history of legal rationalization and codification as well as the nearly parallel development

⁵⁹² Diderot and D'Alembert, *Encyclopédie*.

⁵⁹³ ANOM FM F/3/263, "Tables Chronologiques et alphabetiques du Code de la Martinique."

of historical writing in early modern Europe and into the Enlightenment during the eighteenth century.⁵⁹⁴ These commentators had also read major Enlightenment thinkers like Voltaire and Rousseau, the latter of which was a favorite source for epigraphs at the beginning of these commentaries.

As in metropolitan France, legal debates increasingly moved outside of the space of the courtroom itself and into a public sphere as printed codes and broadsides made law more accessible to a variety of French subjects.⁵⁹⁵ By the 1780s, French subjects in Île de France, Martinique, and the metropole were joined in a common debate about proper jurisprudence that became increasingly polarized over issues like judicial torture, slavery, and the kingdom's fiscal crisis.

⁵⁹⁴ For a distillation of the development of historical thinking in France during the eighteenth century, see Donald R. Kelley, "History between Research and Reason," in *Fortunes of History: Historical Inquiry from Herder to Huizinga* (New Haven: Yale University Press, 2003), 26-55.

⁵⁹⁵ This is a topic that has received very much attention for Europe and British American colonies, but has been virtually ignored for plantation societies like the Antilles and Mascarenes, which are often thought to have lacked a public sphere. It is worth noting that the Antilles and Mascarenes did not have cafés, as in Europe, though they did have cabarets (taverns), which were heavily regulated. Courts, like the conseils, were sites of sociability in the colonies and in Europe. For more on cabarets and courtrooms, see chapter one. For a survey of these areas that illustrates the exclusion of tropical zones like the Antilles and Mascarenes, see e.g. Hannah Barker and Simon Burrows, eds. *Press, Politics and the Public Sphere in Europe and North America, 1760-1820* (New York: Cambridge University Press, 2002). This pattern appears to be changing in French colonial historiography as scholars increasingly look at the spread and influence of revolutionary ideas in places like Saint-Domingue and Guadeloupe, but it is still a much understudied topic for the pre-revolutionary era. E.g. Gene E. Ogle, "The Trans-Atlantic King and Imperial Public Spheres: Everyday Politics in Pre-Revolutionary Saint-Domingue," in *The World of the Haitian Revolution*, edited by David Patrick Geggus and Norman Fiering (Bloomington: Indiana University Press, 2009), 79-98. The increasing transparency of judicial politics is a recurrent theme in metropolitan French legal history for this period, though not yet for the simultaneous colonial cases discussed here. For example, Sarah Maza has emphasized publicized legal cases and court scandals as having incited increasingly vicious public debates about the monarchy in the decades leading up to the revolution, though the printed legal materials examined here were written for a more elite audience. Maza, *Private Lives and Public Affairs*. Michael Breen has shown that debates about judicial politics within the courts were common in the seventeenth century, but only became public after legal professionals became political outsiders and resorted to printed pamphlets to air their grievances. Michael P. Breen, *Law, City, and King: Legal Culture, Municipal Politics, and State Formation in Early Modern Dijon* (Rochester, NY: University of Rochester Press, 2007), 205. For a quick overview of these debates as they pertained specifically to the Parisian parlement in the eighteenth century see chapter four of Julian Swann, *Politics and the Parlement of Paris*, 87-121.

Case studies from the Atlantic colonies of Martinique and Guadeloupe and from the Indian Ocean colonies of Île de France and Île Bourbon reveal that these processes took place along the borders of France's kingdom, not just from its center, though at a later pace. Colonial codifiers and jurists, as well as conseil members and a range of French subjects, shared legal knowledge that traveled along distinct pathways that varied depending upon geographic and local factors. In the Atlantic, the development of a creole (i.e. island-born) elite in the late seventeenth century and the education of this elite in metropolitan law schools nurtured the emergence of a group of jurists who were equally comfortable in joining metropolitan legal debates and advocating for colonial interests. Legal knowledge was more concentrated and spread more quickly among a variety of French subjects here than it did in the Indian Ocean. In the Indian Ocean, the slower and later development of the islands' economies and their isolation from mainland France and other colonies meant that jurists were likewise well-acquainted with metropolitan legal debates, but because they had recently arrived from France rather than from a creole background that included stints in metropolitan law schools. Though a creole elite had emerged by the mid-eighteenth century, Indian Ocean jurists tended to be composed more of traders and military officers that were more connected to metropolitan France and Pondichéry and did not self-identify as Mascarene in the same way that Atlantic jurists presented themselves as Antillean.

While local elites, including magistrates, during the entire long eighteenth-century continued to remonstrate with the king over legislation they felt was unfair, the increasing emergence of colonial codification projects indicated that these elites had begun to appropriate the legislative as well as judicial roles that has been, from the last decades of

the seventeenth century, symbolically loaned to them as the king's representatives.⁵⁹⁶ Though magistrates did not claim universal rights to legislation, the power they claimed through the right to articulate, organize, and interpret French laws meant that in practice they claimed legislative rights in which the king approved their laws, rather than the other way around.⁵⁹⁷

This process created a certain amount of fragmentation within France's global kingdom over time, as magistrates increasingly insisted upon local differences as grounds for their independent projects. However, the proliferation of printed codes also contributed to a unifying dynamic within France's legal geography as local legislation became increasingly known to residents of other parts of the kingdom. Île de France magistrates cited Martinican edicts on the *Te Deum* ceremony which was practiced across France's early modern empire, for instance, and corresponded with *avocats* in metropolitan France, like the Grenoble parlement.⁵⁹⁸ *Conseils supérieurs* were crucial incubators for these projects as they employed magistrates from longstanding elite families, who had amassed power and wealth via the *conseils* during the long eighteenth century. By the middle of the eighteenth century, legal expertise was considered such a crucial skill for sons of these families that many first-generation *conseillers* began to send

⁵⁹⁶ Remonstration was a process by which royal courts negotiated with the king over new legislation. Courts, especially the *parlements*, used this power to push back against encroachments by the monarchy throughout the early modern period, but historians have not examined the remonstrances issued by the colonial *conseils*, a topic I hope to investigate for future versions of this project. Many historians have examined remonstrances in metropolitan France, but for an introduction, see Bailey Stone, *The French Parlements and the Crisis of the Old Regime* (Chapel Hill: University of North Carolina Press, 1986).

⁵⁹⁷ A pattern that matches similar trends in metropolitan France. See especially Swann, *Politics and the Parlement of Paris*.

⁵⁹⁸ Referenced in ANOM COL E 119, Jean André de Ribes, 13 January 1768. Letter to Praslin. For more on the *Te Deum*, see chapter four. In the 1770s, Ribes also corresponded with an *avocat* named Moydieu who was associated with the Grenoble parlement and also the Bretagne and possibly the Paris parlements. These long distances also created confusion, as one letter noted that Moydieu initially thought that Ribes was in Saint-Domingue in the Antilles, not in Île de France. ANOM COL E 318, Moydieu.

their sons to French law schools. As these students returned, they reinvigorated the *conseils* by applying new reform ideas and began to consciously fashion the *conseils* as active political bodies, not just law courts, as the metropolitan *parlements* became increasingly politicized, too. Originally designed as judicial entrepôts across France's frontier regions and new possessions, the *conseils supérieurs* contributed to the increasing integration of France's judicial infrastructure by sheltering and nurturing these magistrates as they continued to practice law in the colonies and to participate in empire-wide judicial debates.

Metropolitan writers like Domat had begun by invoking an eternal divine order dictated by natural laws, but colonial writers emphasized their first-hand experience as magistrates. They situated this local knowledge in colonial history and drew upon *conseil greffes* as evidence, a much more circumscribed scope than the transcendent links earlier French metropolitan codifiers sought to describe between France's legal domain and the natural order.

Though both Antillean and Mascarene codifiers anchored their arguments in the recent past, Antillean writers were more self-consciously historical than their Mascarene counterparts. Mascarene writers like Delaleu were most often metropolitans who saw colonial law through the lens of metropolitan models, but the Martinican Pierre Dessalles based his 1786 legal treatise on Martinican history since French colonization—a mere century and a half before. Dessalles and Petit de Viéville did not cite France's history in Europe except in the form of royal treaties and decrees that they registered as part of the Martinican *conseil's* records. Dessalles included a neutrality treaty between France and England from 1686, but the treaty pertained directly to Caribbean possessions, most notably Saint-Christophe. These pragmatic documents may be categorized as part of an early modern genre of legal handbooks in addition to its status as written law. Sarah

Hanley has shown that ordinary Europeans likewise distributed legal knowledge through a variety of informal legal guides and dictionaries, a pattern that correlates with the sharp rise in printed material during the early modern period.⁵⁹⁹ Similarly, colonial codifiers shared legal expertise with administrators so that they could more accurately govern according to the law.

Atlantic and Indian Ocean colonies contrasted on the issue of local compilations of colonial law. All colonial administrators sought to present a clear vision of good colonial governance (sometimes citing Montesquieu, John Locke⁶⁰⁰ or Francis Bacon⁶⁰¹ as authorities), but this vision varied depending on the author's loyalties to local or metropolitan interests.⁶⁰² Atlantic colonies like Martinique and later Saint-Domingue produced *conseil* jurists so experienced and politically active that they began to compile, annotate, and publish their own editions of colonial law, complete with case studies. In the Indian Ocean, such compilations were much slower to appear and the Mascarenes never produced many legal codes. In the Indian Ocean colonies, experienced colonial jurists tended to be either high-ranking military officials or administrators more directly associated with Versailles or commercial agents. Mascarene colonial experts were more likely to have metropolitan legal experience than Antillean jurists, who relied heavily

⁵⁹⁹ Sarah Hanley, "The Pursuit of Legal Knowledge."

⁶⁰⁰ Jean-Baptiste Thibault de Chanvalon, *Voyage à la Martinique, contenant diverses Observations sur la Physique, l'Histoire Naturelle, l'Agriculture, les Moeurs, & les Usages de cette Isle, faites en 1751 & dans les années suivantes*. (Paris: J. B. Bauche, 1763), 4. Hamilton College Library, Beinecke Rare Books Collection, Clinton, New York. Chanvalon quotes Locke on Pennsylvania as a good example of writing about colonial law.

⁶⁰¹ Petit de Viéville, ed., *Code de la Martinique*, cover page. The quotation is, "In Societate Civili, aut Lex, aut vis Valet."

⁶⁰² See especially Malick Ghachem's section on Moreau de Saint-Méry, who was perhaps the most successful at playing this game, becoming a client of the Minister of the Marine, the Marquis de Castries. However, Moreau de Saint-Méry originally ended up in Saint-Domingue as a result of financial problems. Malick W. Ghachem, "Montesquieu in the Caribbean: The Colonial Enlightenment between Code Noir and Code Civil," *Historical Reflections/Réflexions Historiques* 25.2 (1999): 202-6.

upon local precedents though they were increasingly likely to have had some metropolitan education over the course of the eighteenth century. The Antilles developed a unique and vocal group of lobbyists who advocated for increased judicial and other kinds of political autonomy through legal projects like the codes, while Mascarene codifiers intended more simply to make fragmentary legal information more accessible and complete.

In the Atlantic, second-generation creole magistrates began to write and publish legal codes in the mid-eighteenth century, mobilizing both their status and expertise to describe and advocate for the colonial legal regime of which they were in charge. However, the transition from manuscript into print was not always accomplished and existing manuscript sources from the second half of the eighteenth century imply that a legal culture built around these sources continued to exist alongside the growing legal culture built around printed materials. Though most codifiers came from Martinique (even the ones who worked in Saint-Domingue), similar projects were carried out in Guadeloupe as well. In 1779, a draft of Guadeloupean laws was put together that was very similar to Martinican legal codes, except that it was never published. The preface (or *discours préliminaire*) asserted that metropolitan laws, especially the Paris Custom and royal ordinances, were the foundation of French colonial law. However, “experience made it clear [*a fait voir*] that the laws were insufficient for the islands. The mores, the genius, and above all the climate, the needs and the commerce of colonies different from those of Europe, had provoked [the creation of] new regulations.”⁶⁰³ It was approved by the Antillean governor general and intendant general (based in Martinique), as well as Guadeloupe’s conseil president, who signed off on it as it was received in a meeting 12 November 1779. Like Dessalles’ *Annales du Conseil* for Martinique, it was written by a

⁶⁰³ ANOM FM F/3/236, “Receuil des Loix Particulières à la Guadeloupe et Dépendances,” iii.

single author, but does not say who and it appears to have never been published. It was most likely written by a conseiller at the request of Guadeloupe's governor and intendant.⁶⁰⁴

Martinique's conseil supérieur produced the most remarkable and consistent legacy of colonial jurists who used legal codification projects to simultaneously fashion themselves as heirs to a long history of legitimate local colonial rule and to build a platform for judicial and political reforms based upon that case for legitimacy. Jean Assier, Emilien Petit, Jacques Petit de Viéville, and Pierre Dessalles all served as conseillers on the Martinican court during roughly the first, second, and third thirds of the eighteenth century. In their writing, they often complained about the uselessness and misguided provisions of laws issued to them and suggested ways to decide cases that would be effective in the local conditions. Experience and familiarity with the local context of Martinique—the alliance of free people of color with white-led militias, for instance—made these commentators the best possible guides to both the knowledge and practice of France's imperial institutions. These compilations illustrate the particularity of council decisions (including many interesting case studies like the ones discussed in this dissertation) as well as the process by which council magistrates synthesized received royal laws with local conditions. These commentaries form the best evidence for the process by which wide imperial dictates were interpreted and applied on a local scale.

The most prominent jurists, Assier, Petit, Moreau, and Dessalles, all came from some of the families that had dominated Martinican society since the seventeenth century. The Dessalles family had emigrated to Martinique from Saint-Christophe in the

⁶⁰⁴ Frédéric Régent, *Esclavage, Métissage, Liberté: La Révolution Française En Guadeloupe, 1789-1802* (Paris: B. Grasset, 2004).

1680s via Brittany (Rennes).⁶⁰⁵ The Assier and Petit families had likewise been in the Antilles since the seventeenth century and were aligned by marriage and through political alliances, while the Moreaus had long been on the Martinican conseil and feuded with the Assier and Petit faction.⁶⁰⁶ Later, a scion of the Moreaus compiled the largest existing collection of sources for prerevolutionary Saint-Domingue, including a legal code and description of the colony, as well as a massive compilation of laws from across France's *ancien régime* empire.⁶⁰⁷ Together, members of these four families defined colonial law for the French Caribbean,⁶⁰⁸ and Martinique⁶⁰⁹ in particular. By the end of the eighteenth century, these codifications had become specific and detailed enough that several dealt with single colonies and *conseils*, attempting to give an encyclopedic grasp (and guide) to readers.

Jean Assier wrote the first-known compilation of French colonial laws at some time while he served on Martinique's conseil supérieur for an extraordinarily long career from 1719 to 1771.⁶¹⁰ However, no copy of his manuscript appears to have survived and a later commentator, Pierre Dessalles, completed Assier's project noting that Assier had never actually completed it.⁶¹¹ One major contribution of Assier's work was its regional scope. Martinique was the administrative center for all of the French Caribbean colonies

⁶⁰⁵ Émile Hayot, *Les Officiers du Conseil Souverain de la Martinique et leurs Successeurs les Conseillers de la Cour d'Appel: Notices Biographiques et Généalogiques* (Fort-de-France: Annales des Antilles, 1965), 112-3.

⁶⁰⁶ Hayot, *Les Officiers*, 191 and *passim*.

⁶⁰⁷ See below discussion of Moreau de Saint-Méry.

⁶⁰⁸ E.g. Moreau de Saint-Méry, *Loix et constitutions*.

⁶⁰⁹ Petit de Viéville, ed., *Code de la Martinique*; M. Durand-Molard, *Code de la Martinique*, 5 vols., Nouvelle édition. (Saint-Pierre, Martinique: Impr. de J.-B. Thounens, fils, 1807).

⁶¹⁰ Hayot, *Les Officiers*, 75.

⁶¹¹ Dessalles, *Les Annales du Conseil*, T. 1, Vol. 1, viii-ix. Dessalles went on to say that Assier's work offers useful tips on the governance of the entire region, as Martinique was the administrative center for the French Antilles until 1714 for Saint-Domingue and until 1762 for Guiana and Guadeloupe.

until 1714 and from then on managed Guiana and Guadeloupe (with Saint-Domingue becoming administratively independent), so Assier's experience applied to the entire set of Atlantic sugar colonies. Like the anonymous Guadeloupean code, Assier's missing manuscript code provides evidence that legal codes were initially created as manuscript documents meant to be kept with the greffes as references for magistrates, but that printed codes allowed this material to be more easily shared among legal professionals both locally and abroad.

The Petit family included prominent council members from families with strong ties to Martinique and Saint-Domingue as well as Dijon in France who also commented extensively on colonial law. The Petit family expanded both its transcolonial ties in the Antilles alongside its transatlantic connections to the metropole, but family members promoted these connections by writing legal works that presented a distinctive colonial perspective on colonial laws.⁶¹² While not born in the islands himself, another relative, Jacques Petit de Viéville married into a prosperous Martinican family. He was Sénéchal of Saint-Pierre, Martinique and edited a 1767 edition of Martinique's legal code.⁶¹³ Like Emilien Petit's later volume, Petit de Viéville intended his work to serve an educational purpose, informing colonial residents of colonial laws and ensuring their enforcement.⁶¹⁴ A chronological index of edicts and laws showed how colonial governance had changed over time, from the substance of laws on topics like passenger boats and runaway slaves

⁶¹² E.g. Emilien Petit, a Saint-Dominguan and Parisian official. In a 1771 survey of colonial law, Petit traced the history of French colonization in the Caribbean from the first settlements on Saint-Christophe to Saint-Domingue's plantation society, even including transcripts of charters and other founding documents, that was very similar to Pierre Dessalles's later historical claims via legal documentation for Martinique, discussed below. Emilien Petit, *Droit public; ou, Gouvernement des colonies françoises d'après les loix faites pour ces pays* (Paris: Chez Delalain, 1771).

⁶¹³ Petit de Viéville, ed., *Code de la Martinique*. Another example is Pierre Dessalles, who collected and published the records of Martinique's Superior Council. Dessalles, *Les Annales du Conseil*, Vol. 1, T. 1, ix.

⁶¹⁴ Petit de Viéville, ed., *Code de la Martinique*, i.

to the structure and roles of Martinique's council and its members. This project underscored the local expertise of Petit de Viéville based on his practical experience and offered a model of colonial governance that could be followed by his readers. The participation of family members in an intercolonial discussion about local laws indicates that Caribbean colonies were governed on a regional level by parties interested in the experiences of those who had held their positions in the past. While military administrators often moved among colonies on different assignments, council-members and Caribbean families used their own influence and connections to share knowledge about the past and present institutions while debating the future direction of colonial governance.

Even though colonial jurists sought to stabilize legal knowledge and enforce neglected edicts through published law codes, revisions were often necessary to correct and expand the haphazard collection of laws that came from several sources. Petit de Viéville's work was published by the royal Martinican publisher with the permission of the governor, the Comte d'Ennery, and the intendant, M. de Peinier, in April 1767. Petit de Viéville attempted to present a correct and complete edition, arguing that he had spared no effort to make sure that this work would be useful to his audience: the "Colons" or white colonial elites.⁶¹⁵ However, he published a supplement only five years later, in 1772, to include laws that he had discovered after the *Code's* initial publication.⁶¹⁶ Other codes likewise went through several editions as codifiers sought to continue to provide up-to-date information.

⁶¹⁵ Ibid., Avertissement, ii.

⁶¹⁶ Jacques Petit de Viéville, ed., *Supplément au "Code de la Martinique"* (Saint-Pierre, Martinique: P. Richard, 1772), Bibliothèque Nationale de France. Paris, France. Accessed on Gallica database 5 November 2011. <http://gallica.bnf.fr/ark:/12148/bpt6k113037x/> Conseil greffes and other legal documents were also difficult to keep because of the tropical environment: Petit complained of a "continual war" waged against insects and other pests that contributed to a disorder of the laws. Jacques Petit de Viéville, ed., *Code de la Martinique*, Avertissement, i.

One of the most influential Antillean legal codes was published in 1786, likely a result of at least a decade of previous work. Pierre Dessalles's *Annales du Conseil Souverain de la Martinique* was the most explicitly historical of the Antillean legal codes and it presented Martinique's legal history via a chronological listing of individual laws, each followed by Dessalles's commentary. Two questions motivated Dessalles' analysis in the *Annales*. First, to what degree did colonial residents know about the law's prescription? Second, to what extent did they follow the law's dictates in practice? That is, an initial question existed of whether laws promulgated in France about the colonies were safely transmitted to colonial administrators, while a second (and to Dessalles, more important) question remained regarding the degree to which those administrators actually carried out those orders.

For Dessalles, the solution was to create a legislative tableau that stretched back to the colony's founding and to interpret that tableau on the basis of his own life and experience as a creole magistrate. He opened the *Annales* by asserting that "There is perhaps no country in the universe where there exist more laws than in the colonies."⁶¹⁷ This statement plainly situated the colonies (i.e. Martinique) within a universe of laws, but implied that those laws could not be properly understood or even known without the help of an expert guide like himself. Throughout the *Annales* he set up previous (especially manuscript) legal collections as forming a "chaos" as a foil to his new and organized version. Likewise, Dessalles emphasized what he claimed was a widespread ignorance of the law among Martinicans as a counterpoint to his new articulation of colonial laws and, especially, their meaning that would fill this lacuna as it was printed and circulated.⁶¹⁸ Dessalles touted this project as a culmination of earlier desires to make

⁶¹⁷ "Il n'est peut-être point de pays dans l'univers où il existe plus de Loix que dans les Colonies." Dessalles, *Les Annales du Conseil*, T. 1, Vol. 1, vii.

⁶¹⁸ Ibid.

legal knowledge accessible, thus consciously overturning the earlier model of legal knowledge that depended upon the space of the conseil itself and did not see manuscript as an inferior container for this knowledge. He also displaced the authority of the law by promoting himself as the arbiter of legal evidence (the laws themselves) and interpretation (in his commentary). With Dessalles, the shift from a legal culture anchored in the conseil space and undergirded by the law itself to a legal culture anchored in the legal code and undergirded by the legal expert was completed.

In the Mascarenes, legal knowledge was much more diffuse. Printed knowledge seems to have tracked more along imperial pathways and, for Indian Ocean and imperial matters, along commercial pathways, while knowledge from manuscript sources remained quite local. Though legal knowledge in manuscript and printed form, as well as interjudicial correspondence, circulated primarily through the conseils, the Mascarene conseils did not become busy centers of knowledge production like the Antillean conseils.⁶¹⁹

The Mascarenes had a smaller concentration of legal experts than the regional networks of creole families that spanned the Antilles from Martinique to Saint-Domingue, with branches on administratively minor islands like Guadeloupe. Instead, the Mascarenes had a larger commercial elite who ran the conseils as well as trading ventures throughout the Indian Ocean system and a smaller contingent of metropolitan-trained

⁶¹⁹ It is possible that some of this contrast is due to the fact that far fewer sources exist for the Mascarenes than for the Antilles, but it is difficult to know whether this was primarily because fewer sources were created or fewer were maintained. The Antilleans seem to have been much more proactive about both, given the number of self-consciously Antillean histories and codes they produced, the volume of material that Moreau de Saint-Méry collected, and the larger amount of archival material that resides in other collections, like the personnel records. This pattern appears to be confirmed from the Mascarene side by a nineteenth-century commentator, Delabarre de Nanteuil, who noted that conseil registers were incomplete and often existed only in copies when Delaleu began his codification project in the 1770s. Delabarre de Nanteuil, *Législation de l'île de la Réunion*, vii. One other possibility is that legal knowledge tended to migrate to Pondichéry, which was the regional base of French government in the Indian Ocean, but I have been unable to confirm this hypothesis.

legal experts (usually *avocats*). Codified laws were a similar goal for Mascarene council members who likewise desired a clear handbook of legal principles and prescriptions to deal with the wide variety of issues under their purview, but far fewer legal codes were published in the Mascarenes. Though Antillean legal projects were tied specifically to local claims to political power, Mascarene projects sought to frame Indian Ocean legal practices as part of a much more global French legal system that depended upon consistent and strong ties between Mascarene and Parisian magistrates.

The main legal code for the Mascarenes, known as the *Code Delaleu* after its author, did not appear until 1777 in Île de France and it was repeatedly revised over the next four decades.⁶²⁰ This code was like the Antillean examples in that it was organized chronologically and by theme and sought to bring together information formerly held in the greffes. However, it was created by a person with more metropolitan interests who had only come to the Mascarenes at the midpoint of his career. In 1768, Jean Baptiste Etienne Delaleu was practicing as an *avocat* in the Paris parlement when he petitioned the government to go to Île de France for his own reasons, but asked for a commission as an *assesseur* in the Île de France conseil where “he desired to make himself useful by the knowledge that he had acquired in studying the law.”⁶²¹ This statement was reminiscent

⁶²⁰ All of the codes were by Jean-Baptiste-Étienne Delaleu and the extant copies appear to be held only in the Bibliothèque Nationale de France: Delaleu, *Code des Isles de France et de Bourbon* (1777); *Premier supplément du Code de l'Isle de France. Contenant la Collection des Loix promulguées en cette Isle, depuis le premier Janvier 1776 jusqu'au premier Janvier 1783. Par M. Delaleu, Conseiller au Conseil Supérieur de l'Isle de France, & procureur du Roi du Tribunal Terrier de la même Isle* (1783); *Deuxieme supplement du Code de l'Isle de France. Contenant le Recueil des Loix publiées en cette Isle depuis le premier Janvier 1783, jusqu'au premier Juillet 1787 ; & l'Analyse sommaire de toutes celles renfermées dans ce Volume & dans les deux précédens. Par M. Delaleu, Conseiller au Conseil Supérieur, & Procureur du Roi au Tribunal Terrier, de l'Isle de France* (1787); *Premier supplement du Code de l'Isle de Bourbon. Contenant les Loix publiées depuis le premier Janvier 1776, jusqu'au premier Juillet 1787, ensemble celles qui avoient été omises dans le volume précédent. Par M. Delaleu, Conseiller au Conseil Supérieur de l'Isle de France, & Procureur du Roi du Tribunal-Terrier de la même Isle* (1788); *Code des îles de France et de Bourbon, par M. Delaleu,...* 2nd edition (1826).

⁶²¹ “il desire de se rendre utile par les connoissance qu’il a acquises dans l’étude des loix.” ANOM COL E 115, Jean Baptiste Etienne Delaleu.

of Chanvalon's declaration that all French subjects were useful in the colonies.⁶²² It indicated a willingness by Delaleu to take up any number of positions within the conseil at first, but also alluded to his desire to make a very successful career in the Mascarenes, not through commerce or agriculture, but through the law.⁶²³

Previously Delaleu had worked for fourteen years for an uncle who was a notary in Paris and Delaleu was primarily recommended for the Île de France conseil supérieur on the grounds that educated officers were very rare on the conseil.⁶²⁴ Delaleu eventually became a conseiller and president of the Île de France conseil, where he served a total of twenty-one years in various positions, thirteen of which as a conseiller.⁶²⁵ Delaleu's career matches similar patterns of overseas employment for legal experts, especially *avocats* in the *parlements*, like Jean André de Ribes from the previous chapter. Though they did not always have official appointments through the Marine, they did offer colonial administrators an attractive incentive, legal expertise acquired at the center of the French legal regime in Paris. Like Dessalles in Martinique, Delaleu relied upon his local experiences as a magistrate to inform his codification project but more than Dessalles he combined substantial metropolitan experience to create a hybrid project that addressed both metropolitan and colonial concerns.

Conseil *greffes* appear not to have survived as well in the Mascarenes as they did in the Antilles, so one of the reasons for Delaleu's codification project was to preserve, not just to publicize, existing legal knowledge from the greffes. One later commentator noted that when Delaleu began his project in the 1770s, most of the greffes that existed

⁶²² For this quotation and explanation, see chapter two.

⁶²³ His name is occasionally spelled "de Laleu," but I have chosen to use the more common spelling. ANOM COL E 115, Jean Baptiste Etienne Delaleu.

⁶²⁴ ANOM COL E 115, Jean Baptiste Etienne Delaleu, 30 September 1768.

⁶²⁵ Ibid., Request from Madame Delaleu to the Comte de Luzerne (Marine minister).

were copies, not originals.⁶²⁶ Delaleu (a conseiller) compiled and printed the legislation from 1767 to 1787 in Île de France, which became known as the *Code Jaune* (the “yellow” code distinguishing it from the *Code Noir*, or “black” code). However, even at the time it was very rare, so it was reprinted in 1826 as *Code des îles de France et de Bourbon*. The collection was known as the Code Delaleu, however. It contained two parts, the laws common to both colonies and those specifically for Mauritius; the other part contained laws just for Réunion. It only included one act from before 1767, letters patents and an edict from 1723 that reproduced the *Code noir* (with some modifications).⁶²⁷

In contrast to the limited impact of the Mascarene codifiers, Antilleans like the Petit family and especially Moreau de Saint-Méry left a distinct imprint upon colonial archives and by extension historiography. Their roots lay not in metropolitan France (like Delaleu) where they left their legal collections, nor in Saint-Domingue, where many of them made their fortunes, but rather in older colonies like Martinique. In the 1780s, a creole magistrate and colonial lobbyist, Louis-Médéric Moreau de Saint-Méry began collecting laws, court cases, and official correspondence to create a systematic archive of France’s colonial legal regime. He undertook a classic Enlightenment project, seeking to create a repository of colonial legal knowledge that resembled the *Encyclopédie* of Diderot and D’Alembert in its utility as a reference and Jean Domat’s *Les lois civiles dans leur ordre naturel* in its thematic and comprehensive organization. Though he had grown up in Martinique and served as a magistrate in Saint-Domingue like the Petits, his collection reflected a global, rather than Caribbean, perspective, including laws and cases from French colonies in Canada, South Asia, and the Indian Ocean. This remains an

⁶²⁶ Delabarre de Nanteuil, *Législation de l’île de la Réunion*, vi-vii.

⁶²⁷ Ibid.

unexploited manuscript resource as only the part of this collection concerning Saint-Domingue was ever published, as the *Loix et constitutions*.⁶²⁸ For example, the Île Bourbon code, part of Moreau de Saint-Méry's comprehensive codification project, was never published like the Saint-Domingue law code: a fact that points to the limits of legal publicity.⁶²⁹ The Île Bourbon code also illustrates the degree to which certain colonies, especially Saint-Domingue, received disproportionate attention by colonial lobbyists and aspiring politicians like Moreau de Saint-Méry, who were successful at attracting patrons and investment. In fact, Moreau de Saint-Méry's project shows that French jurists thought of their colonial empire as one piece rather than as disparate colonies.

While the Martinican codes and commentaries advocated explicitly for the interests of colonial (and especially creole) planter and trading interests, Moreau de Saint-Méry's global scope, from Île Bourbon to Martinique, reflected a shift in interests from colonial to metropolitan audiences. Moreau de Saint-Méry's project was supported by Minister of the Marine, the Marquis de Castries, and was motivated more by metropolitan concerns about uniformity and the enforcement of French sovereignty than by the local interests represented by the Martinican commentators.⁶³⁰ Many of the

⁶²⁸ Like the overall project, this code was written with a metropolitan audience in mind. Though the majority of the code's 331 subscribers were based in Saint-Domingue, around 50 were based in metropolitan France. The latter consisted of a range of traders based in port cities, government ministers based at Versailles, Parisian parlement members, and the king himself (for thirty copies). Six other subscribers were Martinican, including one Martinican, Faure de Lussac, whose career followed a similar trajectory from Martinique to Saint-Domingue, including stints on both conseils. No subscribers from Guadeloupe or the Mascarenes were listed. Moreau de Saint-Méry, *Loix et constitutions*; ANOM COL E 177, Faure de Lussac.

⁶²⁹ ANOM F/3/208 and 209. The Saint-Domingue laws were self-published as Moreau de Saint-Méry, *Loix et constitutions*.

⁶³⁰ These codes—over 200 volumes—are maintained in ANOM Fonds Ministériels, Série F3. For a more thorough survey of Moreau de Saint-Méry and his wider activities as a colonial lobbyist and deputy to the National Assembly for Martinique during the French Revolution, see Dominique Taffin, ed. *Moreau de Saint-Méry, Ou les ambiguïtés d'un créole des Lumières*, Actes du colloque organisé par les Archives départementales de la Martinique et la Société des Amis des archives et de la Recherche sur le Patrimoine culturel des Antilles, (Fort-de-France: Société des Amis des archives et de la recherche sur le patrimoine culturel des Antilles, 2006).

documents in those collections are originals—even some from the seventeenth century—but nearly all of the Mascarene material was copied from other sources, especially materials held in the offices of the Secretary of State at Versailles.⁶³¹

However, this legal collection greatly underplays the importance of the Mascarenes, especially as compared with the Antilles. It includes forty-three volumes on Martinique for every five on the Mascarenes, roughly nine times the amount of material on Martinique than on the Mascarenes.⁶³² As a former resident of Martinique and Saint-Domingue, Moreau de Saint-Méry would have had much better access to Antillean sources (and Antilleans living in Paris) who could direct him, as well as his own expertise as a former magistrate in these islands. It also shows the high degree to which Antillean conseil members made sure to keep records of their decisions and thought very consciously about their judicial practices.⁶³³ This makes it very likely that Moreau de Saint-Méry missed important information about the Indian Ocean colonies because he was focused on the more familiar Antilles.

⁶³¹ An archival headnote explains the Versailles connection, though it does not identify this distinction between the Martinican and Mauritian collections. ANOM FM F/3. <http://anom.archivesnationales.culture.gouv.fr/ark:/61561/wz818kejlr>, Accessed 9 September 2012.

⁶³² Only two volumes of Moreau de Saint-Méry's legal code collection cover Île de France (three deal with Île Bourbon), compared to forty-three for Martinique alone. These are all in ANOM FM F/3. The Île de France volumes are ANOM FM F/3/210 Île de France (1556-1768); ANOM FM F/3/211 Île de France (1769-1806). In a fairly typical distribution of archival material by colony, eighty-nine volumes concern Saint-Domingue. Saint-Domingue was the colony that received the most attention during the eighteenth century (it was the wealthiest), so it is most likely that the records are fullest for that colony. Martinique was one of the oldest and most established colonies (and had a large population of creole elites invested in its continued influence), so its records are likely fairly complete as well. It is unclear how many volumes total comprise this collection because the numbering is inconsistent. There are catalog numbers for 257 volumes in ANOM FM F/3, but they are not all law codes. An archival headnote listing how many volumes relate to specific colonies adds up to 181 volumes, but that may not be an accurate total count.

⁶³³ For example, the personnel records (ANOM COL E) have a very similar breakdown by colony. For a more thorough discussion of creole jurists and how their legal projects manipulated both the kind and quality of legal materials that exist in archives today, see chapter five.

Despite this bias towards the Antilles and away from the Mascarenes, the emergence of this project in the 1780s also indicated a change in priorities among the judicial elite. Where before the middle of the century they emphasized local knowledge gained in and tied to the conseil space, after it they favored widely applicable knowledge obtainable by possessing a printed legal source, knowledge that was less linked to the physical space in which it was created than to the internal cohesion of the document (i.e. legal code) itself. Where Martinican commentators had emphasized the need for practical experience in *conseil* meetings (or *séances*) that took place in the colonies themselves, Moreau de Saint-Méry sought to write a more universal script for colonial governance in which individual laws (organized by colony) were only volumes in a collection that encompassed the entire colonial realm of France's empire. However, both the Martinican codes and Moreau de Saint-Méry's project relied on the *conseils supérieurs* and their greffes in providing a core of legal evidence, indicating that the conseils remained the key site in which colonial legal problems were worked out.

His project also marked an expansion of colonial elites' appropriation of metropolitan strategies for their own purposes. Though early jurists had expanded the role of jurists with the greffes and the codifiers of the 1760s to 1780s had taken over the additional role of legislator, Moreau de Saint-Méry's project marked an expansion of colonial elites' role in the collection of knowledge in France's continually expanding information state, a process that had begun in the 1670s. Starting in 1776, colonial administrators were required to send a copy of tribunal (lower court) and conseil greffes to France as part of an empire-wide attempt to preserve colonial records like court cases and property contracts (like mortgages) in metropolitan France through the creation of a

centralized Dépôt des Papiers Publics des Colonies.⁶³⁴ This created a massive movement of documents from colonial peripheries to the metropolitan center by compiling it in a central source, now held in the Overseas section of the French National Archives.

CONCLUSION

The long eighteenth century began and ended with two major waves of codification projects, in the 1680s and the 1780s, that were born out of judicial reforms undertaken in the parlements and conseils with the collaboration of administrators and local elites. These projects were designed to remake and standardize France's legal regime from one end of the empire to the other: Atlantic to Indian Oceans, metropolitan center to colonial periphery. Though instigators of both waves claimed authority and patronage from the royal center at Versailles, the creation of legal knowledge and the sources from which codifiers created their works depended heavily upon the conseils supérieurs. The conseils supérieurs were crucial to the management of France's first global empire from 1680 to 1780 as clearinghouses for legal information and their influence and as sites in which legal norms were forged through jurisprudence.

Between these two important decades and especially around the time of the Seven Years War, the framing and foundations of France's legislative tableaux changed as the processes by which legal knowledge was created and shared in and around the conseils supérieurs shifted. Though the first half of the long eighteenth century was characterized

⁶³⁴ Now a major collection of colonial documents by that name in the Archives Nationales d'Outre-Mer in Aix-en-Provence, France. The primary motivations for this process seem to have been the disorganization of colonial records (like the disparate laws of which legal commentators always complained), the difficulty of preserving documents in tropical colonial climates (as Petit de Viéville complained), and the need to keep good records of the valuable plantations and other colonial enterprises, which were often the subject of hotly contested court cases and very complicated successions (especially as the large amounts of capital needed to buy a plantation resulted in complex credit transactions). A final motivation also seems to have been a desire to rein in the autonomy of the planters, who by 1776 had become a very vocal lobbying group.

by a culture dependent primarily on manuscript culture and the space of the conseils, the second half of this century was marked by a legal culture in which legal knowledge was increasingly shared through print. As laws and commentary circulated more widely, legal authority depended less upon the symbolic construction of spaces like the conseils supérieurs in which legal knowledge was held and more upon the organization of the legal knowledge itself in printed codes.

The processes of jurisprudence in France and its overseas colonies changed over the course of the eighteenth century, but they remained centered on the conseils, which continued to channel knowledge throughout the legal geography of France's *ancien régime* empire. Though the emphasis of this global legal regime shifted from jurisprudence embedded in the space of the conseils to legal knowledge articulated in the text of the codes, legislative and judicial functions were understood throughout this period as merged, not distinct.⁶³⁵ Matthew Gerber has recently proposed that during the early modern period, "The Bourbon monarchy ultimately failed...to complete the shift from an adjudicatory to a legislative model of law" and that the unification of France's legal regime only came after the fall of the Bourbon monarchy during the French Revolution, with the adoption of Napoleon's *Code Civil*.⁶³⁶ This statement does aptly summarize the transition in colonial societies from a model of jurisprudence based in the conseils to a model of legal practice dependent upon a set of legislative tableaux, but it creates an artificial distinction between judicial and legislative functions. In the Antilles

⁶³⁵ Montesquieu's famous conception of a separation of legislative, executive, and judicial powers appeared in 1748 in *L'esprit des lois*, so the connections between emerging Enlightenment critiques of France's legal system remain to be explored on this issue. This chapter's epigraph from Montesquieu appeared in Moreau de Saint-Méry's *Loix et consitutions* for Saint-Domingue, one of many examples of his influence on colonial codifiers. For more on the relationship between Montesquieu and the Caribbean jurists, see Ghachem, "Montesquieu in the Caribbean."

⁶³⁶ Gerber, *Bastards*, 17.

and Mascarenes, the attempted transition from adjudicatory to legislative models was inextricably linked to the *conseils supérieurs*, as both judicial and legislative bodies. Conseil personnel were central players in both the earlier and later phases of legal knowledge creation. The practice of law also depended upon the ability of conseil magistrates to create laws in accordance with the laws of France and to merge their knowledge of legislation, whether preserved in registers or law codes, as they decided cases.

Case studies from the Atlantic and Indian Ocean colonies reveal local ripples within these wider waves. In the case of Atlantic sugar colonies, like Martinique, council members worked together to create and collate useful decisions and what they recognized as the most important laws, especially from the conseil greffes, as Dessalles' work shows. Family networks of council members spread across several Caribbean colonies worked together as colonial lobbying organizations, especially through membership on the *conseils supérieurs*. In the more isolated Indian Ocean sugar colonies, however, infrajurisdictional correspondence proved to be more important as a way for council magistrates and family members to work together across long distances. Council members also relied upon the expertise of well-traveled *conseillers* like François Millon and correspondence networks in order to stay abreast of legal developments. However, here, too, the *conseils* played a critical role, as legal knowledge in the form of laws and correspondence were recorded and kept in conseil registers (*greffes*).

While colonial jurists complained about the quantity of laws they were required to implement and uphold, the solution to these problems was not solely in new published law codes (which quickly became out-of-date when new laws were published), but actually in the judicial power these codes revealed that the *conseils supérieurs* possessed. Seventeenth-century ministers like Colbert had established *conseils supérieurs* in frontier

regions of France as well as the colonies in order to integrate these peripheral zones into the French bureaucratic structure more thoroughly, but this process was only possible with the approval of local magistrates who had the expertise to manage both royal legislation and individual cases. Metropolitan models like Montesquieu and Domat informed the creation (and especially the organization) of colonial codes, but colonial magistrates like Petit de Viéville and Delaleu insisted upon their own judicial experiences in the *conseils supérieurs* as grounds for their authority and it was the records of law and court cases held in the *greffes* that formed the key sources for judicial commentary.

The creation of legal codes also allowed legal knowledge to percolate across a wide range of social groups as printing and other forms of publicity educated French subjects about the laws they were expected to follow.⁶³⁷ Before the Seven Years' War, these guides and accompanying judicial debates most often took the form of the *conseil greffes*, correspondence, and some printed broadsides. After the war, magistrates and other elites (whether creole or metropolitan) became increasingly aware of and invested in metropolitan judicial controversies and legal reform movements, so they began to publish their own legal codes that declared their own expertise, simultaneously demanding a metropolitan audience and advocating for local colonial interests. As

⁶³⁷ Historians of early modern empire have long been fascinated by the question of how information was shared across such long distances. For how information was transmitted to and around early America, see e.g. Richard D. Brown, *Knowledge Is Power: The Diffusion of Information in Early America, 1700-1865* (New York: Oxford University Press, 1989). Two specific types of information-sharing have been recently emphasized by historians: the spread of revolutionary knowledge (especially among slaves) and the collection of information by emerging empires. For the former, see, e.g. Laurent Dubois, *A Colony of Citizens: Revolution & Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill: University of North Carolina Press, 2004). and for the latter see, e.g. Banks, *Chasing Empire Across the Sea*. Robert Darnton has recently repurposed a familiar eighteenth century French source, police records, to chart the spread of information through oral culture, especially popular songs. Robert Darnton, *Poetry and the Police: Communication Networks in Eighteenth-Century Paris* (Cambridge, MA: Belknap Press of Harvard University Press, 2010).

judicial and legal debates permeated French society more and more, in France and across the globe, colonial subjects were drawn more and more into empire-wide debates about law and legality, a pattern that would continue into the revolutionary period and contribute to the global scale of the revolution itself.

Conclusion

“Necessitas non habet legem,” or “Necessity has no law.”
—Anonymous Latin dictum

*“The port of Île de France..[is the]...
arsenal of our forces and the entrepôt of our commerce.”*
—Alexis Rochon, 1791⁶³⁸

Early visitors to France’s Atlantic and Indian Ocean colonies often questioned whether these new territories were too chaotic in environment and inhabitants to be governed by a rationalized legal regime guaranteed by a divinely-guided monarch. In the mid-seventeenth century, Guillaume Coppier, a servant from Lyon, wrote about his “appalling adventures” to the Caribbean.⁶³⁹ He visited many Caribbean islands, including Martinique, Guadeloupe, Saint Eustatius (a major Dutch entrepôt), and Saint-Barthélemy. Coppier emphasized the rapacity of colonial leaders, quoting the Latin dictum, *“Necessitas non habet legem,”* or “Necessity has no law.”⁶⁴⁰ Life as an indentured servant, according to him, included constant hunger, thirst, and weakness as the desire to make a quick profit had prompted colonial proprietors to work indentured servants very hard. The desperate need to survive in the colonies had made it necessary to work constantly, so that a survivor mentality rather than any political order governed the colonies. Coppier reported on these conditions and argued that “without poverty the two

⁶³⁸ Alexis Rochon, *Voyage a Madagascar et aux Indes orientales* (Paris: Chez Prault, Imprimeur du Roi, Quai des Augustins, à l’Immortalité, 1791), vi. John Carter Brown Library.

⁶³⁹ Coppier is the only known indentured servant to have written a memoir of his experiences, in his *Histoire et voyage des Indes occidentales*, or *History and Voyage from the West Indies*, which he dedicated to his Lyonnais patrons and France’s ruling regent, Anne of Austria. Coppier dedicated it to three patrons in Lyon: M. de Solleysel (a squire, or *écuyer*, and lord), a M. du Clappier, and a M. de la Berardière (royal magistrate in the Lyonnais *sénéchaussée* and presidial court as well as an exconsul of Lyon). Guillaume Coppier, *Histoire et voyage des Indes occidentales, et de plusieurs autres regions maritimes, & esloignées. Divisé en deux livres* (Lyon: Pour Jean Huguetan, rue Merciere, au Plat d’Estain, 1645), Marcel Chatillon Collection, Bibliothèque Mazarine, Paris. Coppier described his experiences as “espouvantables adventures,” 4.

⁶⁴⁰ *Ibid.*, 5.

rarest virtues of the century, which are mercy (*miséricorde*) and patience, would be banished from the world.”⁶⁴¹ Necessity, then, was the primary motivator for the colonial social and political order, in the initial decades of colonization. Coppier’s cynical nonelite point-of-view would have been shared by most inhabitants of the Antilles and Mascarenes throughout the long eighteenth century—especially by the majority enslaved populations that displaced indentured servants by the early 1700s.

Yet, within a hundred years of Coppier’s writing, necessity had, in fact, *proven* the need for law in all of France’s domains. In the late seventeenth and eighteenth centuries, aspiring elites and their families latched onto positions in legal institutions like the conseils supérieurs to advance their careers and gain power in France and its colonies. Colonial defendants and litigants like Pitre Paul and Magdeleine Françoise similarly sought to defend their rights and claims in the conseils and they (and their enemies) used the conseils to access judicial forums at home in the colonies and by appeal to France. Though episodes like the Gaoulé and the Dumas affair revealed weaknesses within the conseils, they ultimately demonstrated the centrality of the conseils as judicial entrepôts in which questions of local and imperial authority could be worked out. They also showed that the conseils were durably linked by personnel and correspondence to metropolitan legal resources like the king’s councils, even in times of controversy. By the 1780s, colonial jurists like Dessalles and Delaleu showed how law had shaped (and been shaped by) colonial necessities as they annotated legal compendia that articulated colonial histories as well as laws. Over the course of the long eighteenth century, from the 1680s to the 1780s, France’s ancien régime empire had been successfully united under one common legal regime from its metropolitan frontiers to its outposts in the Atlantic and Indian Oceans, anchored by the conseils supérieurs.

⁶⁴¹ Ibid., 6.

Visitors to these outposts recognized that they were valuable commercial centers, but this was only made possible by the creation and maintenance of the conseils supérieurs as judicial entrepôts. After the Parisian astronomer Alexis Rochon visited the Mascarene islands in the 1770s, he called Île de France the “arsenal of our forces and the entrepôt of our commerce.”⁶⁴² Though he wrote at the end of the ancien régime, not at the beginning of the long eighteenth century like Coppier, Rochon also recognized the strategic value of France’s insular colonies for military and trading purposes. As in metropolitan France, commercial transactions made in these colonies and crimes could only be dealt with as long as there were judicial forums in place, the conseils, to adjudicate cases through court hearings and to affirm the validity of laws and decisions in the conseil greffes. Greffiers, like Lousteau from chapter two, maintained court registers while magistrates, like Delaleu and Dessalles from chapter five, wrote codes to promote access to that legal knowledge. Ship captains, like Querangal from chapter three, sought hearings in these entrepôts when duels happened aboard ship while conseil participants, like Ribes from chapter four, employed interjudicial correspondence to work their way back in to the conseils when they were kicked out. Court users, like Madame Blot from chapter three, appealed court cases from colonial to metropolitan entrepôts when their cases did not turn out the way they wanted. Together, these examples illustrate the choreography of justice within France’s ancien régime empire.

This study lays out a blueprint for global history that substantiates the connections among Atlantic, Indian Ocean, and European histories through the legal geography of France’s ancien régime empire. It recognizes the impact of imperial structures like the conseils supérieurs in managing such a far-flung project as well as the more important and varied experiences of council participants, who managed a range of social, economic,

⁶⁴² Rochon, *Voyage a Madagascar*, vi.

and political interests through the vehicle of these conseils. While a recent resurgence in interest in the French Atlantic has renewed and expanded the depth of colonial scholarship for France's first overseas empire, few studies outside of France have dealt with the truly global scale of this enterprise.⁶⁴³ French historiography has more consistently dealt with the Atlantic and Indian Oceans together, especially as Réunion remains a French department alongside Martinique and Guadeloupe. However, most of these works are meant to grapple with modern concerns about the legacy of French slavery and rarely explain the pre-revolutionary context of colonization as this study does.⁶⁴⁴ Yet colonial residents and investors from circa 1680 to 1780 thought of the first French empire as a single piece, with varying degrees of integration. They participated in varying levels of intensity: from the very localized decisions of individual conseils involving resident workers and traders to the well-worn pathways between colony and metropole traveled by magistrates like Ribes in the Indian Ocean and Dessalles in the Atlantic. It even displays the careers of magistrates like François Millon and governors like Dumas across all three spheres of imperial activity: France, the Atlantic and Indian Oceans.

A new conception of France's ancien régime empire as a global network of judicial entrepôts accomplishes three tasks that speak to questions about the world history of the early modern era. First, this reconception offers a better way to see how French subjects understood their place in the world and complicates distinctions between

⁶⁴³ For an introduction to this new scholarship and several examples of it, see Cécile Vidal, ed. "L'Atlantique français," *Outre-Mers* Number 362-363 (2009): 7-139.

⁶⁴⁴ For slavery, see Frédéric Régent, *La France et ses esclaves: de la colonisation aux abolitions, 1620-1848* (Mesnil-sur-l'Estrée: Grasset, 2007); for abolition, Marcel Dorigny, ed., *The Abolitions of Slavery: From L. F. Sonthonax to Victor Schoelcher, 1793, 1794, 1848* (New York: UNESCO/Berghahn Books, 2003); for the revolution in the Indian Ocean context (and in response to the stronger Caribbean literature for this subject), see Claude Wanquet, *La France et la première abolition de l'esclavage, 1794-1802: Le cas des colonies orientales, Ile de France (Maurice) et La Réunion* (Paris: Karthala, 1998).

empires and nation-states. One recent and influential study contrasts empires, defined as “large political units, expansionist or with a memory of power extended over space, polities that maintain distinction and hierarchy as they incorporate new people,” with nation-states, which are “based on the idea of a single people in a single territory constituting itself as a unique political community.”⁶⁴⁵ However, France’s ancien régime empire fits both definitions. As a large polity with expanding (albeit later contracting) territorial claims in Europe, the Americas, Africa, and Asia, France did extend power over large spaces. Likewise, it maintained distinction and hierarchy over its subjects within France through the maintenance of legal categories like noble privilege and additionally in overseas colonies through the legal and social institution of slavery. Yet the legal regime that emerged over the course of the long eighteenth century simultaneously claimed to constitute a single political community held up by a network of judicial entrepôts spread around the globe and maintained by an increasingly homogenized framework of codified legislation.

Second, this formulation accounts for the ways empires imposed connectedness and uniformity upon their subjects, a set of strategies that Jane Burbank and Frederick Cooper have called “repertoires of imperial power.”⁶⁴⁶ For France’s ancien régime empire, some of the most important repertoires were components of the conseils supérieurs: the common legal vocabulary, the familiar set of courtroom *accoutrements*, the standardized panel of conseillers and greffiers. For powerful creole families and metropolitan administrators, these commonalities created opportunities to build successful transoceanic and global careers. Likewise nonelites like Madame Blot and

⁶⁴⁵ Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010), 8.

⁶⁴⁶ Burbank and Cooper, *Empires in World History*.

Pitre Paul discussed in chapter three participated in judicial forums in the Antilles, Mascarenes, and Europe via the conseils and metropolitan courts and through interjudicial correspondence. Conseillers like Desgranges de Richeteau, described in chapter two, could travel from a job in the Paris Parlement to the Île de France conseil without having to learn a new language or skillset. Legal knowledge acquired in France was so useful in colonial contexts that creole families in Martinique like the Dessalles and Moreaus made sure to have at least one member per generation who had trained in France.

The French subjects analyzed in the negotiated legal issues both in judicial forums in new zones of French sovereignty like Île de France and Mauritius, but they also frequently continued to work out these same issues in metropolitan centers like the Parisian *parlement*. These subjects often managed these different forums at different stages in the same cases, drawing lines of connection across the traditional metropole-colony binary with their physical movement in and out of courtrooms across France's early modern empire. These movements were enmeshed by networks of correspondence among judicial entrepôts in France and its colonies that supported the movement of court cases through channels of hearing, adjudication, and appeal.

This study shows that the Atlantic and Indian Oceans, though distinctive, were never separate spheres of French imperial activity. Instead, these spaces formed a coherent whole as they were traversed and connected by the constant movement of French subjects and their correspondence. These movements, which together formed choreography of justice, were often channeled through the conseils supérieurs as judicial entrepôts set up around the Atlantic and Indian Ocean littorals.

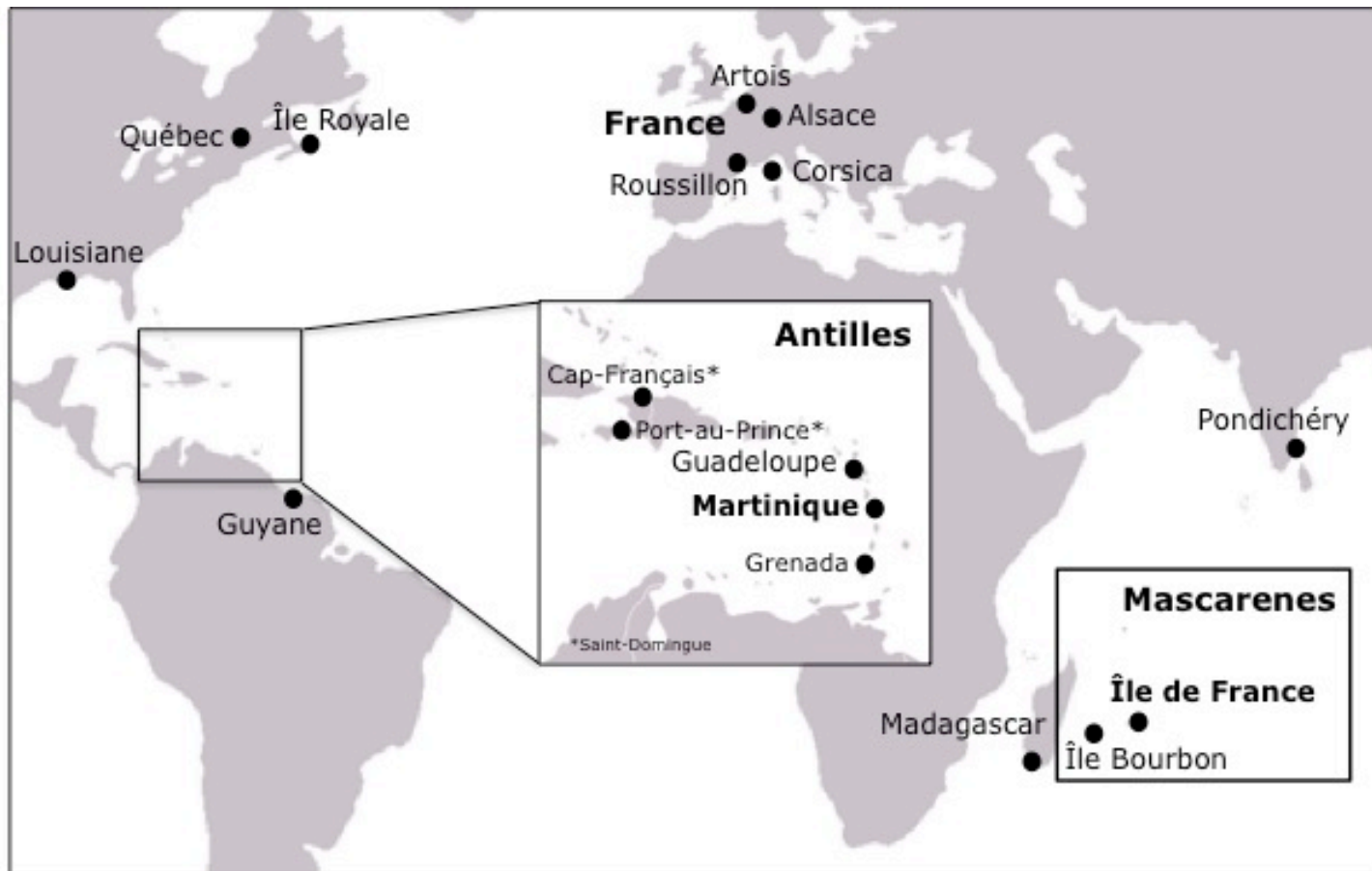
Finally, it provides a framework through which we can see the spaces in between France's "îles" rather than assuming that an artificial homogeneity bound France and its

overseas territories together within a common imperial state. France's *ancien régime* empire did not fill a unified global space, though it spanned Europe, the Americas, Africa, and Asia. Instead, France's legal regime depended upon a configuration of judicial *entrepôts* set up in key parts of its European and overseas empire. In between these *entrepôts*, French subjects and court participants could fall, or be pushed, into legal *lacunae* that were both real, like Ribes's dreaded deserted island and the Martinican administrators' Atlantic banishment in chapter four, and symbolic, like the punishments of La Grange and Bordenave in chapter one and La Bouralière in chapter three. Without the participation of court magistrates and participants (or in cases where they refused to participate, like the Gaoulé), parts of France's overseas empire could become disconnected from the whole. This framing challenges us to rethink categories of globalization and migration to account for the absence as well as the presence of unifying forces like law.

This study began with a visualization of France's overseas empire composed of a few ships and military equipment like cannon on an empty seashore, all presided over by a monarch represented by the sun and *fleurs-de-lis*. Surprisingly, though, this image contains no people. Even the monarch only appears symbolically. However, France's *ancien régime* empire was constituted by French subjects, not by cannon and ships. The objects in the image only have meaning if they can be connected to the people who employed these tools. Without the work of subjects like the individuals and communities presented in this study, the global regime that emerged over the course of the long eighteenth century would not have happened and the ready supplies on the seashore in the foreground of this image would never have made it across the Atlantic and Indian Oceans to new colonies in the Antilles and Mascarenes.

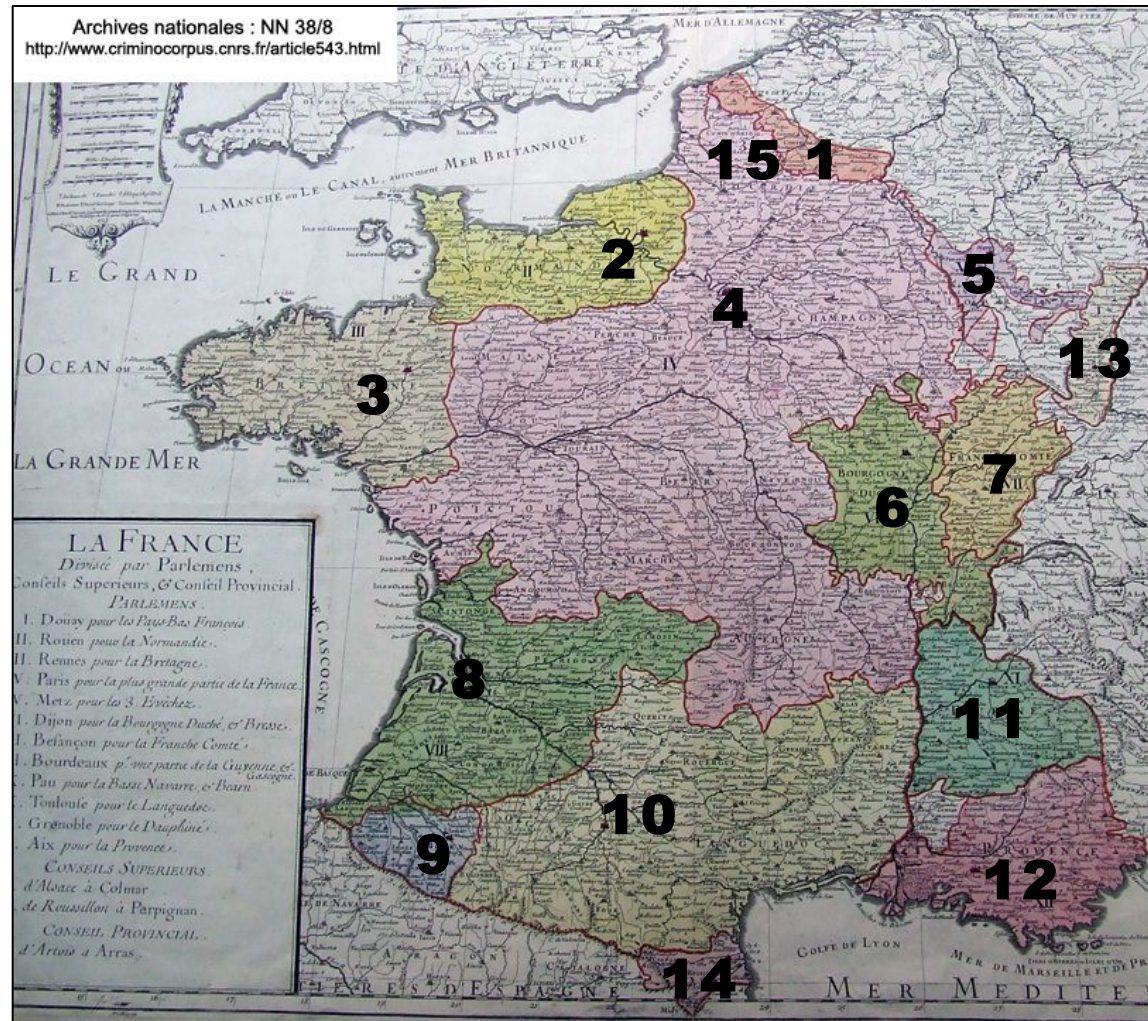
Appendices

MAP 1, THE CONSEILS SUPÉRIEURS



Based on http://commons.wikimedia.org/wiki/File:Blank_Map_Caribbean.png, Licensed under the Creative Commons Attribution-Share Alike 3.0 Unported license; http://commons.wikimedia.org/wiki/File:Blank_map_of_world_no_country_borders.PNG, Licensed under Creative Commons Attribution-Share Alike 3.0 Unported license, Retrieved 11 January 2013.

MAP 2, FRENCH METROPOLITAN LAW COURTS



Based on Archives Nationales de France, NN 38/8. Retrieved from http://criminocorpus.cnrs.fr/media/filer_public/2012/08/19/carte-parlemens.jpg, 11 January 2013.

Map 2 Legend:

Parlements

1. Douai (Pays-Bas)
2. Rouen (Normandie)
3. Rennes (Bretagne)
4. Paris
5. Metz (Trois Évêchés)
6. Dijon (Bourgogne)
7. Besançon (Franche-Comté)
8. Bordeaux (Guyenne)
9. Pau (Navarre/Béarn)
10. Toulouse (Languedoc)
11. Grenoble (Dauphiné)
12. Aix (Provence)

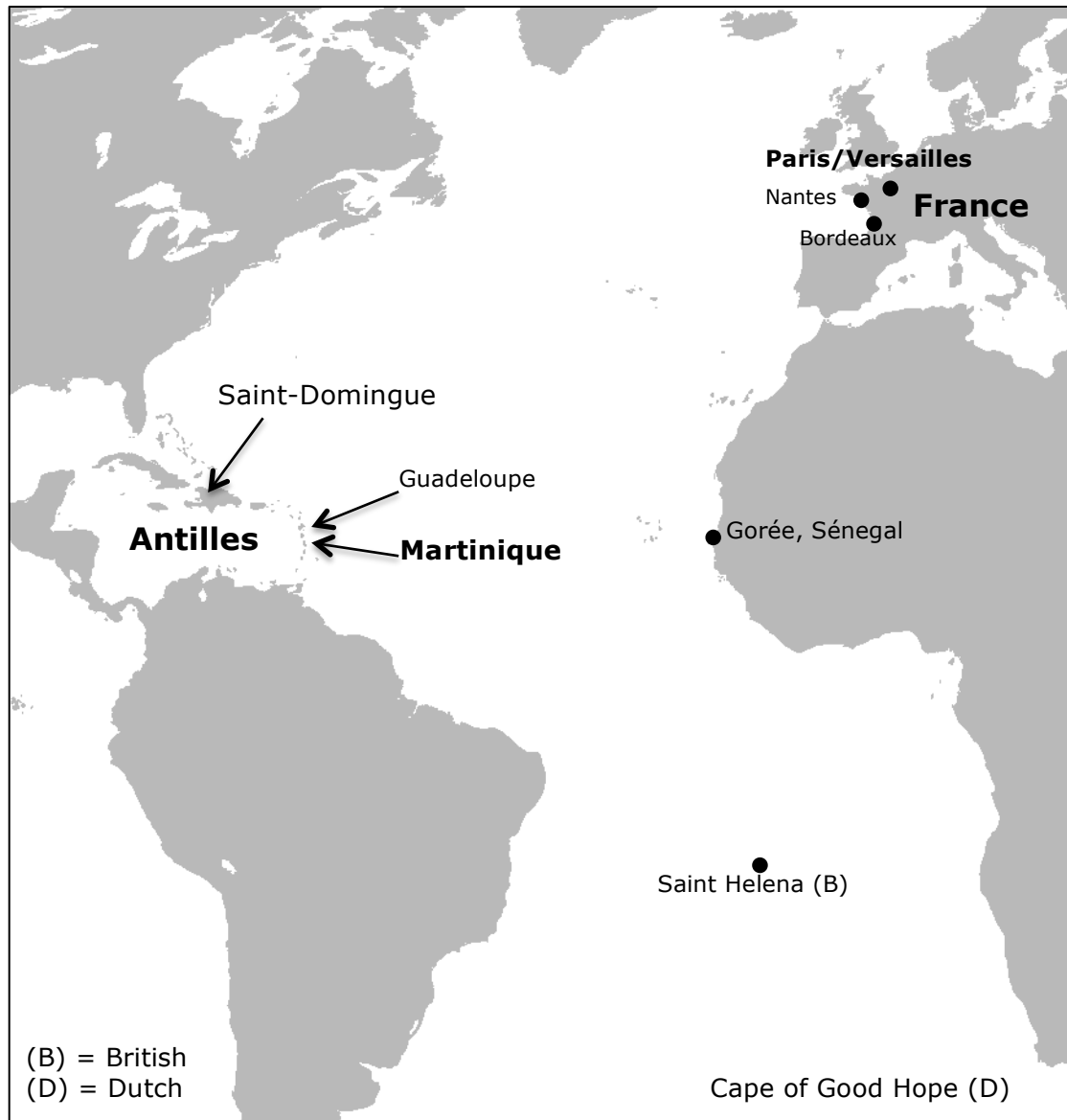
Conseils Supérieurs

13. Colmar (Alsace)
 14. Perpignan (Roussillon)
- Corsica (not shown)

Conseil Provincial

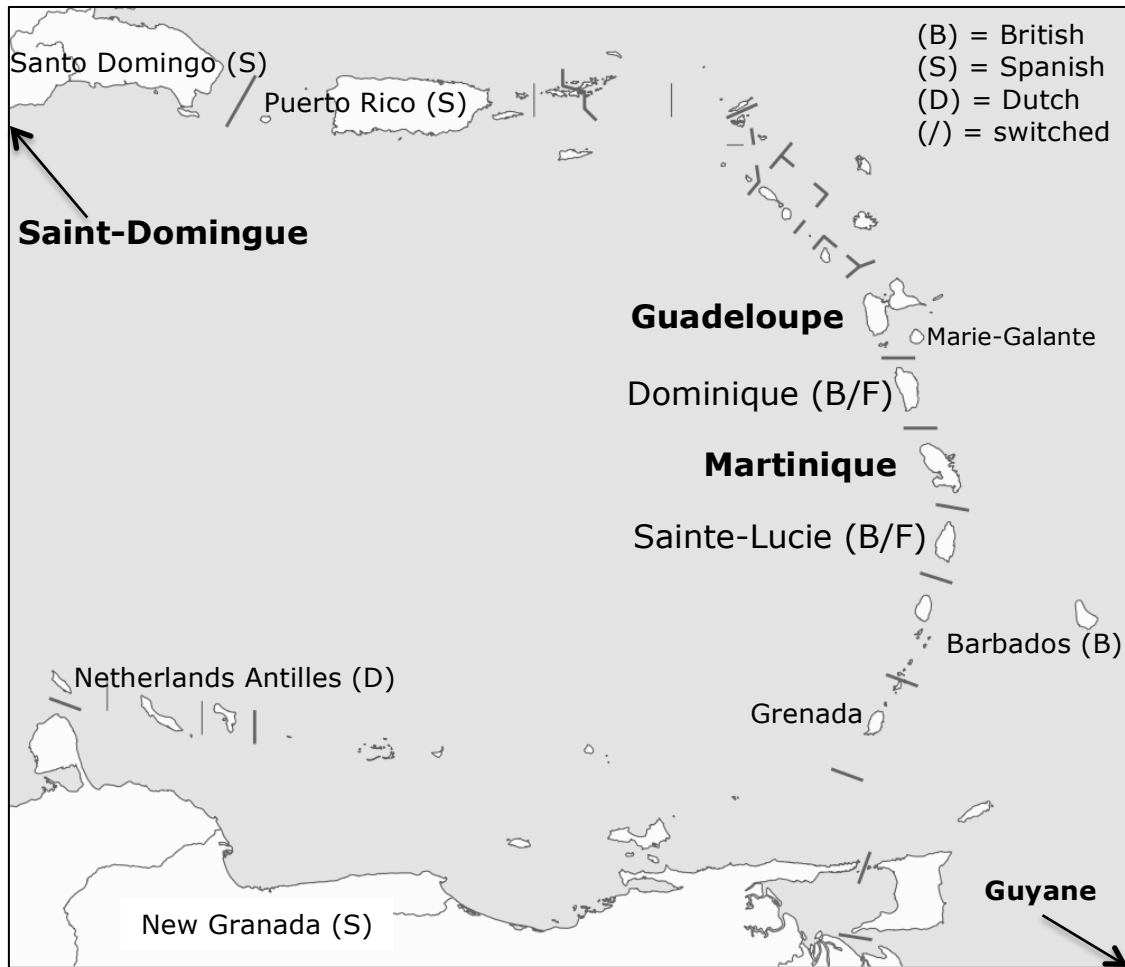
15. Arras (Artois)

MAP 3, THE ATLANTIC OCEAN REGION



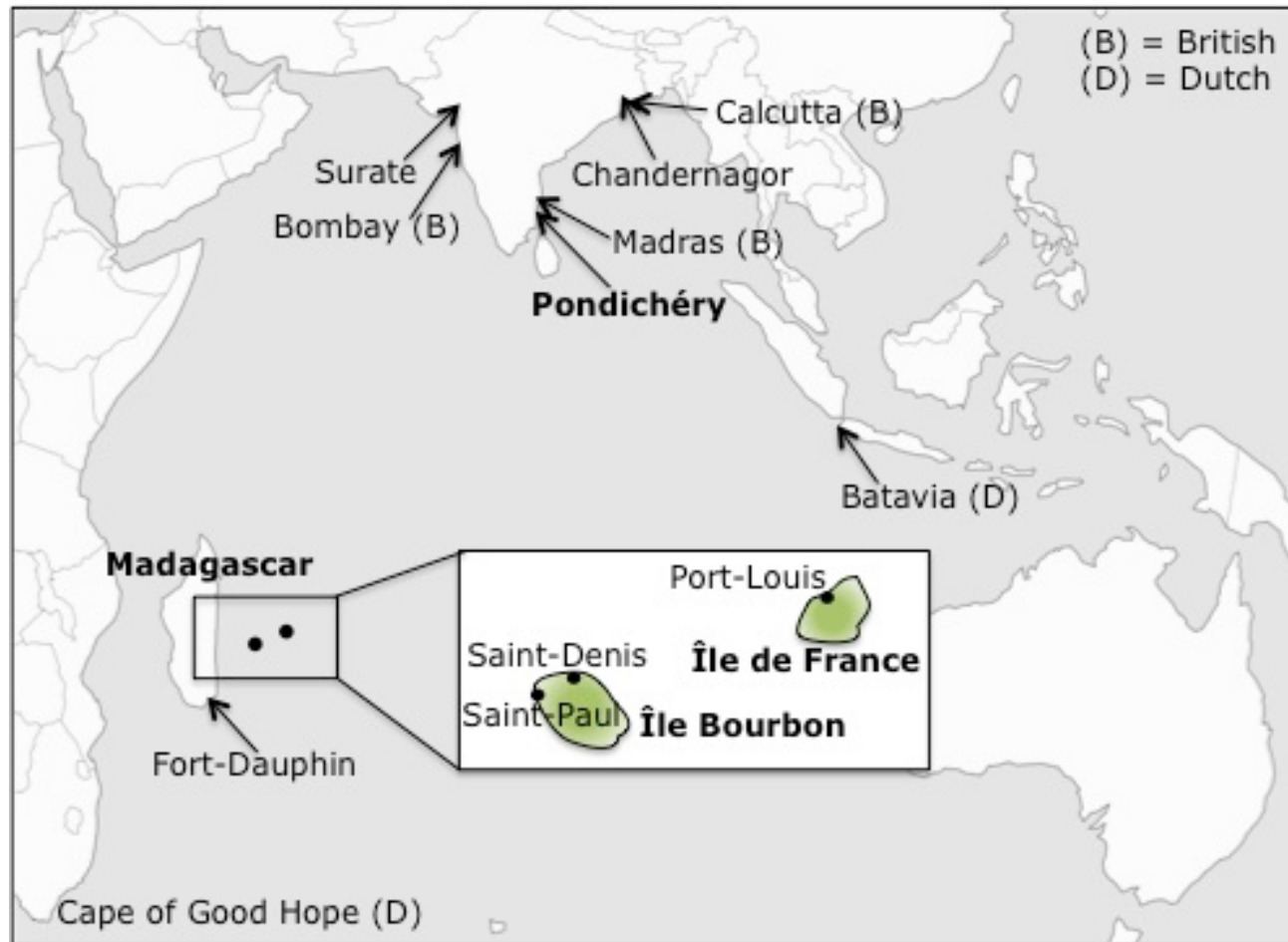
Based on <http://commons.wikimedia.org/wiki/File:BlankMap-World-large-noborders.png>;
Public Domain, Retrieved 11 January 2013.

MAP 4, CARIBBEAN DETAIL OF THE ATLANTIC REGION



Based on http://upload.wikimedia.org/wikipedia/commons/thumb/2/22/Lesser_Antilles_location_map.svg/1000px-Lesser_Antilles_location_map.svg.png; Licensed under the Creative Commons Attribution-Share Alike 3.0 Unported license, Retrieved 11 January 2013.

MAP 5, THE INDIAN OCEAN REGION, WITH MASCARENE ISLANDS INSET



Note that light gray lines show modern boundaries, though place names are from the early modern period.

http://commons.wikimedia.org/wiki/File:Indian_Ocean_laea_location_map.svg,

Licensed under Creative Commons Attribution-Share Alike 3.0 Unported license, 11 January 2013

**TIMELINE OF MAJOR EVENTS IN
FRANCE, THE ANTILLES, AND THE MASCARENES**

	Antilles	Mascarenes	Metropolitan France
1661			Louis XIV assumed personal rule.
1664	Martinique and Guadeloupe <i>conseils</i> established.	Île Bourbon conceded to the Compagnie française des Indes occidentales	Compagnie française des Indes occidentales organized by Colbert (appointed as controller general of finances the next year)
1667			Colbert, <i>Ordonnance pour la réformation de la justice civile</i>
1669			Colbert, <i>Règlement général pour les eaux et forêts</i>
1670			Colbert, <i>Ordonnance criminelle</i>
1673			Colbert, <i>Ordonnance du commerce</i>
1674	Compagnie des Indes Occidentales liquidated and Antilles become royal colonies.		
1685	<i>Code Noir</i> issued to the Antillean colonies.		
1710			Bureau des Colonies established.
1711		March 1711 <i>conseil provincial</i> established in île Bourbon by edict	
1714	From 1714, Martinique was the seat of the government general of the Îles du Vent (Windward Islands), including Guadeloupe, Grenade, and others. Saint-Domingue became the seat of the general government of Îles sous le Vent (Leeward Islands).		
1715		Île Maurice claimed for France and renamed Île de France.	Death of Louis XIV and beginning of regency for Louis XV. <i>Conseil de la Marine</i> organized to oversee the navy, galleys, consulates, colonies, and maritime fortifications.
1717	The <i>Gaoulé</i> in Martinique		

1721		Control of the Mascarenes granted to the Compagnie des Indes Orientales	
1723		Île Bourbon's <i>conseil provincial</i> replaced by a <i>conseil supérieur</i> ; Code Noir issued to Île Bourbon conseil (and by extension to Île de France).	With the death of his uncle, the Duke of Bourbon, Louis XV begins to rule with the aid of Cardinal Fleury.
1734		Île de France conseil established.	
1743			With the death of Fleury, Louis XV began to rule alone.
1756-7			Judicial crisis between Paris Parlement and Louis XV.
1756-63	Seven Years' War. British occupation of Guadeloupe (1759-63) and Martinique (1762-3).	Seven Years' War.	Seven Years' War.
1767		Following the bankruptcy and liquidation of the Compagnie des Indes Orientales, the Mascarenes become royal colonies. Coincides with the dissolution and re-establishment of the Mascarene conseils and the Dumas Affair, as well as the arrival of future chroniclers Bougainville and Bernardin de Saint-Pierre.	
1771			Maupeou reorganizes the legal system and dissolves the Paris Parlement.
1774			Maupeou dismissed and parlements restored with accession of Louis XVI.
1787			Paris and Bordeaux Parlements exiled then resealed.
1788			Judicial torture abolished across France and its empire.
1789-90			Parlements dissolved during the French Revolution.
1810		Île de France captured by the British permanently.	
1815	Martinique recovered from British occupation (that had lasted from 1794-1802 and again from 1809-1815)	Île Bourbon recovered from British occupation (that had lasted from 1810-1815).	The Congress of Vienna ends the Napoleonic Wars, returning some territories to France from British occupation.

Glossary of Legal Terms

1. ***amirauté***: An admiralty court, responsible for hearing all cases regarding matters at sea and along French coasts. These jurisdictions were sometimes separate from the *conseils* (though they were staffed by a similar mix of magistrates and military officers) and sometimes composed of the *conseil* or local jurisdiction magistrates, who could hear admiralty cases as well as civil and criminal cases. However, unlike the *conseils*, admiralty cases (whether in France or the colonies) had recourse specifically to the Admiral of France and a court of appeal in Paris known as the Marble Table (“Table de Marbre”).
2. ***arrêt***: A generic term for decree (as in legislation) or ruling (on a court case).
3. ***avocat***: A lawyer with specialized education and admission to higher courts, like the *conseils supérieurs*. They were often members of metropolitan bars, especially the Parisian bar. Similar to an English barrister.
4. ***cassation***: A ruling by a higher court that quashed a lower court’s decision (e.g. an *arrêt*) or legislation. The term could also be used more generally to refer to any legal document that was rejected.
5. ***conseiller***: A magistrate on the *conseil supérieur*. Initially drawn from the planter and military elite in the colonies, they were increasingly trained in metropolitan law schools and sometimes had careers in both colonial and metropolitan law courts.
6. ***conseil supérieur***: A French law court with jurisdiction over appealed, and for certain areas first instances of, criminal and civil cases. They were most often established in new French territories in Europe, the Americas, and the Indian Ocean region. In composition and privileges they were very similar to the *parlements* but held less prestige due to their younger age and the smaller territories and populations they oversaw.
7. ***creole***: a person born in the colonies, as opposed to Europe or Africa. Here, creole refers most often to the colonial elite rather than to the process of cultural blending among Africans, Europeans, Asians, and Americans that occurred in the Antilles and Mascarenes.
8. ***curateur aux successions vacantes***: A guardian for vacant estates who sought out heirs, sold unclaimed property, and contributed to the proceeds to the royal treasury. This position was increasingly common in the colonies due to high mortality rates, the complexity of colonial commercial and real estate transactions, and the desire of the state to track and profit off of unclaimed wealth.
9. ***entrepôt***: A trading station.
10. ***gaoulé***: Creole term for “uprising,” from a mixed etymology of French and possibly Arawak or an African language, used to refer to various colonial

- uprisings by Caribs, slaves, maroons, and planters. When capitalized, refers specifically to a 1717 rebellion by creole planters in Martinique.
11. **governor**: A military office (unlike in the British empire) organized by region in France and its overseas territories. Governors were the king's representative (and embodiment) in the colonies and were mostly responsible provisioning, fortifications, and defense. However, many saw themselves as guardians justice, too, and fought with intendants for political power. They co-administered the colonies with the intendants and oversaw the conseils.
 12. **greffe**: Court registers, usually kept in the *palais de justice*.
 13. **greffier**: A clerk with the responsibility of maintaining the *greffes*. They managed the day-to-day affairs of courts like the *conseils*.
 14. **huissier**: A bailiff and/or town crier.
 15. **intendant**: An office created in the seventeenth century to try to counteract the regional loyalties of governors. They reported directly to the king and were mostly concerned with financial matters like taxation, but in the colonies they were often associated with scientific projects like botanical experiments and irrigation systems designed to make colonial agriculture more profitable. They also oversaw the conseils alongside the governors.
 16. **interjudicial correspondence (*infrajustice*)**: Correspondence among various administrators, judges, and other royal officials that was often used alongside or instead of traditional judicial pathways like formal court cases. Networks of interjudicial correspondence reinforced connections among various parts of France's imperial and judicial apparatus, especially between the Ministry of the Marine and the conseils.
 17. **Letters patent (*lettres patentes*)**: A legally-binding letter or order granting rights or privileges to a person or corporation, usually by a monarch.
 18. **Marine**: The Navy, but also the ministry that oversaw colonial affairs, including the conseils as well as associated areas like the intendance and military.
 19. **mercuriale**: A special court session convened to discuss anomalies or controversies in judicial process. Colloquially, a "mercuriale" was a reprimand.
 20. **metropole**: The imperial center and capital region. This could refer to France as a whole or more specifically Paris and the Île de France region, especially the center of government at Versailles.
 21. **palais de justice**: A "palace of justice," or court building.
 22. **parlement**: Law courts established throughout *ancien régime* France from the fourteenth century onward. Royal legislation was issued to the *parlements*, which registered laws to make them active. They were dissolved during the French Revolution.
 23. **procureur général**: A general prosecutor, responsible for initiating cases (especially criminal) in the kingdom's interest. There was at least one *procureur général* for each jurisdiction, whether a local *siège* or a *conseil supérieur*.
 24. **procureur**: A lawyer responsible for drafting basic legal documents like wills and contracts. When they worked for the conseils, *procureurs* often gathered initial

- court documentation like depositions in what would today be known as the discovery process. Similar to an English solicitor.
25. **remonstration**: Originally an appeal to the king's judgment following an adverse decision or edict, but began to be associated specifically with the *parlements'* practice of negotiating with the king over new legislation. In the eighteenth century, the *parlements* often used this as a strategy to declare their disapproval of the king's authority more generally and campaign for more judicial autonomy and legislative power, a pattern that signaled cracks in the *ancien régime* and led directly to the judicial crises of the 1780s.
26. **royaume**: The most common term for France and its overseas possessions during the *ancien régime*. It implied a community of French subjects united under the sovereignty held in the person of the monarch and dispensed by his ministers, etc.
27. **siège local/siège royal**: A local jurisdiction, usually composed of a smaller group of magistrates that could include conseillers, that ruled in the first instance. Their cases could be appealed to the sénéchaussées and conseils. Also known as a *juridiction*.
28. **sénéchaussée**: A mid-level jurisdiction, between the *sièges locaux* and the *conseils supérieurs*. Cases from the *sénéchaussées* could be appealed to the conseils. Sometimes also known as a *bailliage*.

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